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## SECTION 8: RESPONSES TO COMMENTS ON DRAFT EIR

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### 8.1 - Comments

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**Appendix M** includes copies of all comments received on the previous Draft EIR circulated in February 2009. The following responses first summarize and then respond to those comments

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### 8.2 Responses to Comments on Previous Draft EIR

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#### State Clearinghouse

##### *Response to Comment A1-1*

This comment states that the Draft EIR is in compliance with the California Environmental Quality Act. The comment does not express any concern with the content of the Draft EIR; no further response is required.

California Coastal Commission

##### *Response to Comment A2-1*

This comment states that the Draft EIR failed to indicate the final chosen site for the sand disposal location. As identified on in Section 3, Project Description of this REIR there are five candidate sites that have been identified as potential sand disposal locations. During the permitting process associated with the Section 10 of the Rivers and Harbor Act, the volumes and sand disposal sites will be finalized.

This comment also expresses concern that the proposed marina that requires dredging and filling is not one of the seven allowed uses within wetlands and coastal waters.

On July 14, 2009, the Coastal Commission adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan. The Plan identifies the uses where diking, filling, or dredging of open coastal waters and wetlands are allowed. Policy 4.2.3-1 states:

“Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasibly less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

A. Construction or expansion of port/marine facilities.

...

C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

This portion of the City's policy modified the wording that is within Section 30233 of the Coastal Act to reflect the conditions for the City of Newport Beach. This modification added the term marine facilities as an approved use because the City does not have port facilities and port facilities are not contemplated within the City of Newport Beach. A marina is considered a marine facility, and therefore, diking, filling, or dredging of coastal waters for a marina is considered an allowed use under the City's Policy 4.2.3-1A. The project includes mitigation for the loss of 0.66 acres of sandy intertidal habitat and BMPs to address water quality. A Draft Delineation of Jurisdictional Waters and Wetlands (see **Appendix D.4**) indicates there are no wetlands on the project site.

The determination of the wetland habitat used in this REIR is based on both the Army Corps of Engineers definition and the California Coastal Commission criteria..

This comment further states that should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. Mitigation Measure MM 5.3-C.1 has been developed to mitigate the project's impact on sandy intertidal habitat. The City understands that the Section 10 permit process will need to be well underway and at least a preliminary determination of approval by the resource agencies prior to obtaining a coastal development permit from the California Coastal Commission.

#### *Response to Comment A2-2*

This comment refers to the California Coastal Commission preference for onsite mitigation. As indicated in 5.3-C in the REIR, excavation and dredging activities for the proposed marina would result in the loss of 0.66 acres of sandy intertidal habitat as part of the creation of 1.56 acres of shallow-water habitat. The loss of 0.66 acres of sandy intertidal habitat would represent a loss of intertidal seabird and shorebird roosting and foraging habitat and EFH. In the case of EFH, that loss would be offset by the net gain of nearly an acre of shallow-water habitat, which would support benthic invertebrates and forage fish that would serve as a food resource for managed species, particularly the Pacific Groundfish species. In the case of shorebirds, the loss of 0.66 acre of sandy intertidal habitat is small in the context both of the amount of local beachfront (approximately 25% of the beach would be lost) and of the amount of such habitat available nearby (i.e., the ocean beaches). The loss of sandy intertidal habitat would be mitigated in accordance with Mitigation Measure MM 5.3-C.1. Accordingly, the loss of intertidal habitat is considered less than significant.

*Response to Comment A2-3*

This comment requests that a sand disposal location be selected and a sand compatibility report for the location be prepared. As identified in Section 3.4.2 of the REIR, there are five preliminary candidate sites for the disposal of sand (including the project site). One or more of these sites would be used for sand disposal and the final site(s) would be determined during the preparation of the U.S. Army Corps of Engineers Section 10 Permit.

As indicated in Section 3.4.2 of the REIR, the Dredge Material Evaluation (**Appendix G.3**) found that approximately 62,000 cubic yards of sand would be dredged. Of that amount, approximately 15,000 cubic yards of fill would be used for the project. The remainder of the sand/soil (47,000 cubic yards) would be exported offsite. The primary offsite disposal options under consideration for the dredged materials are 1) beach nourishment under Regional General Permit Number 67 or an individual permit for unconfined aquatic disposal, as governed by the U.S. Army Corps of Engineers (USACE)/Environmental Protection Agency (USEPA) guidelines set forth in the Inland Testing Manual (ITM; USACE/USEPA 1998); 2) ocean disposal at disposal site LA-3 based on guidance provided by the Ocean Testing Manual (OTM; USACE/USEPA 1991); and 3) upland disposal, or disposal in a confined aquatic location (subject to further study prior to dredging of contaminated material) of approximately 3,000 cubic yards of mercury contaminated material. A sand compatibility analysis of the candidate receiving beaches was conducted according to the USACE Sand Compatibility and Opportunistic Use Program (SCOUP) and is contained in Appendix H.4; it concludes that approximately half of the material proposed to be exported offsite is compatible with the ocean beaches and that the other half could be eligible for those sites under a special permit.

*Response to Comment A2-4*

This comment expresses concern regarding the new groin wall and bulkhead walls for the proposed marina. This comment also desires clarification on why the No Marina Alternative was not chosen. The REIR identifies the No Marina Alternative as the Environmentally Superior Alternative. Nevertheless, the No Marina Alternative does not meet the objectives for the project based on the City's analysis of the need for modern recreational and community facilities on the Balboa Peninsula and the objective of providing for additional marine-related facilities. In addition, although the No Marina Alternative would eliminate potential significant impacts on sandy intertidal habitat and long-term water quality impacts, mitigation measures (i.e., MM 5.3-C.1 for sandy intertidal habitat and MM 5.7-A.2 for long-term water quality) have been included to reduce potential impacts of the Proposed Project to less than significant.

*Response to Comment A2-5*

This comment expresses concern regarding adverse impacts on shoreline processes that may result from constructing a cement groin. As stated in Section 5.7, the Marina Park Coastal Engineering Study (**Appendix H.2** of the REIR). The study included an analysis of the existing and proposed groin walls, wave loading calculations for the docks, boats, and piles within the proposed marina basin, as well as analyses of the water quality and sedimentation issues.

The groin wall shown on the Concept Drawings is required to maintain water depth to support the public sailing docks and transient boat basin, shown on the Drawings. Without this wall, the basin would fill with sediment over time and require premature dredging and high maintenance costs. The existing site already has a groin wall that protects the American Legion facility from a similar sediment transport condition. This groin wall has been in-place for nearly 50 years and has not resulted in negative impacts either up- or downstream of this wall. See also Response A2-7 below.

*Response to Comment A2-6*

This comment states that projects that propose the filling of wetlands and/or coastal waters must demonstrate that the proposed impact would be allowable under the Coastal Act. See response A2-1.

*Response to Comment A2-7*

This comment expresses concern for the impact of the proposed groin wall on erosion and adjoining properties. In addition, this comment also asks for justification on the need of the proposed groin wall.

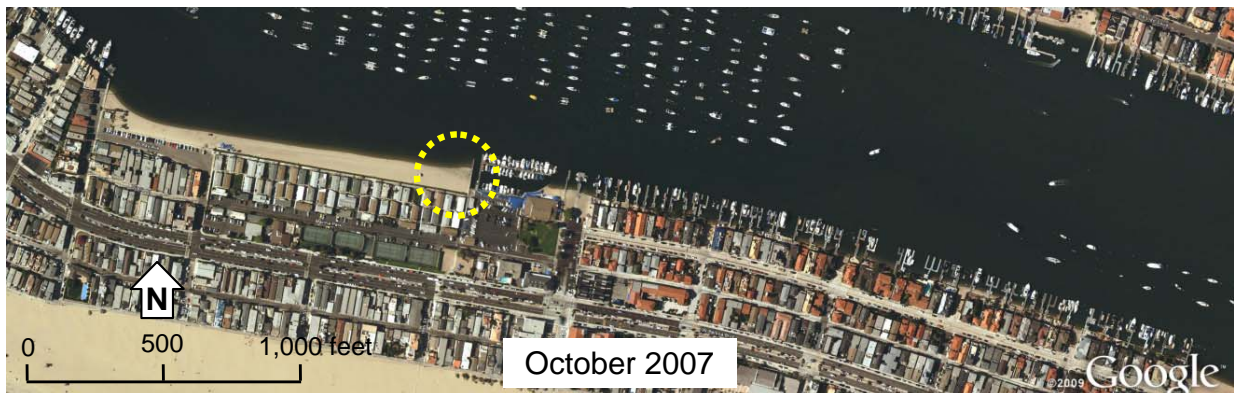
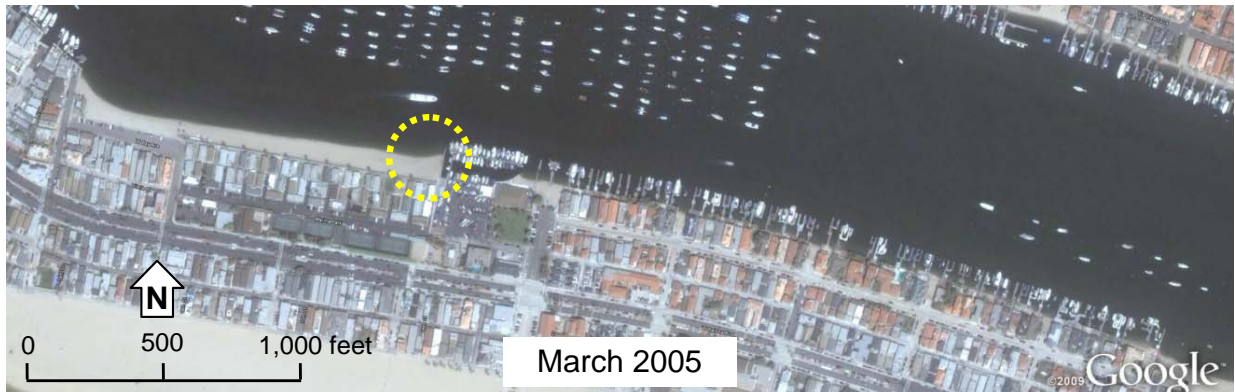
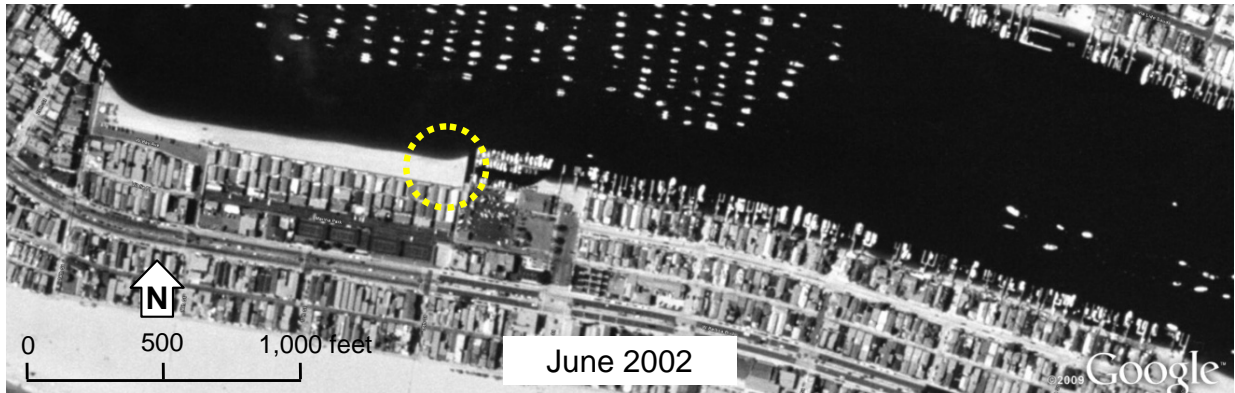
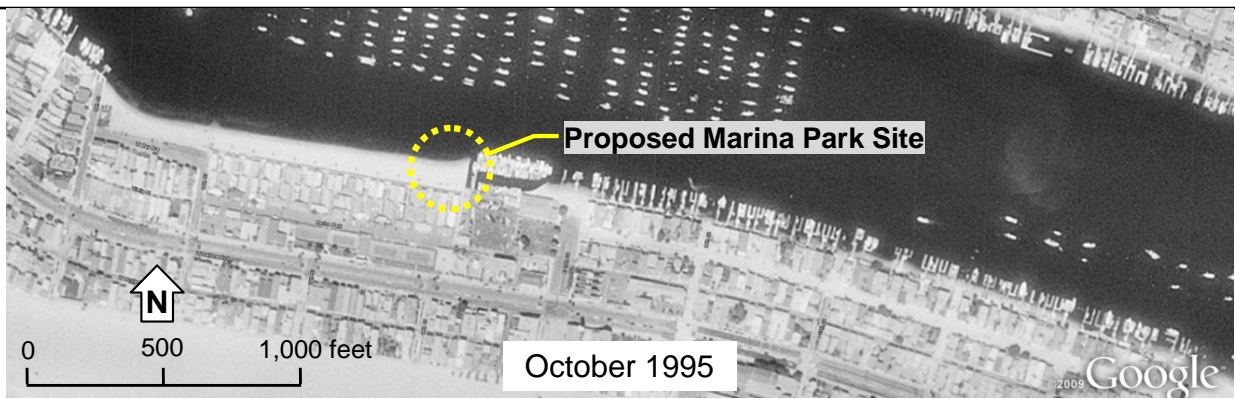
In general, a shore-perpendicular structure such as the proposed groin wall may interrupt longshore movement of sand along the coastline, resulting in the trapping of sand on the upcoast side of the groin and erosion on the downcoast side. The severity of the downcoast erosion depends on the physical environment (wind, wave, current and littoral processes) and the dimensions (mainly the length) of the groin. Based on the physical environment of the proposed project location and the length of the proposed groin wall, we determine that the proposed groin would have minimum, if any, impact to the neighboring shoreline because of: 1) the proposed project is located along a shoreline with benign wave and current conditions and limited littoral transport; and 2) the proposed groin would be located adjacent to and with the same length as an existing groin for the American Legion Post 291 marina (hereafter as American Legion).

The Marina Park project site is located on the Bay side of the Newport Peninsula north of Balboa Boulevard between 18<sup>th</sup> and 15<sup>th</sup> Streets in Newport Beach, California. The proposed project site

is over two miles from the Newport Harbor entrance; hence waves entering the harbor through the tidal inlet would be substantially attenuated before reaching the project site. The project location is also well protected from wind; hence wind-generated waves at the site are very small. An earlier study by Everest International Consultants (**Appendix H.2**) showed that even under extreme wind conditions with a 50-year return period, the waves at the project site would still be less than 2 ft. Based on a two-dimensional hydrodynamic model developed for the Newport Bay and Harbor (**Appendix H.2**), tidal current along the channel adjacent to Marina Park is normally less than 0.1 ft/sec. Because of these benign wave and current conditions, littoral transport along the shoreline of the proposed project site is minimal. Review of historical aerial photos for the site confirmed that the shoreline where the project site is located has been very stable for decades. **Figure 8-1** shows aerial photographs for the project shoreline taken in 1995, 2002, 2005 and 2007. As shown in the photos, the existing American Legion groin has maintained a stable beach west of the groin. The shoreline east of the existing groin is mainly lined with bulkheads and docks. The aerial photos show that there is no discernable difference along the shoreline from Year 1995 to Year 2007. Review of earlier photographs on a commercial web site revealed that the shoreline has been stable since at least 1986.

**Figure 8-2** shows a comparison of the proposed groin and its location relative to the existing groin. Since the proposed groin would have the same length as the existing groin and is located only about 350 ft west (upcoast) of the existing groin, it is expected that the proposed groin would have similar sand retaining characteristics, i.e., capable of maintaining a stable beach west of the proposed groin, and would have a similar (negligible) effect on the downcoast shoreline. The only direct impact of the proposed project would be the loss of the beach between the proposed and the existing groins; however, the existing beach would be widened to recapture a portion of the lost acreage. In addition, beach access would be improved with the proposed Marina Park, thereby providing improved coastal recreational opportunities for the community.

The proposed groin wall is needed to prevent the beach sand west of Marina Park from migrating into the marina basin. The proposed groin would have the same length as the existing groin, hence is expected to perform similarly as the existing groin. A particle tracking numerical model study (**Appendix H.2**) has shown that the proposed groin would provide similar protection to the proposed Marina Park marina basin as the existing groin provides to the American Legion marina. As discussed earlier, the existing groin has been shown to be effective in maintaining a



Source: Google Earth Pro

## Exhibit 8-1 Historical Aerial Photos

CITY OF NEWPORT BEACH • MARINA PARK  
ENVIRONMENTAL IMPACT REPORT





Image from Google Earth Pro

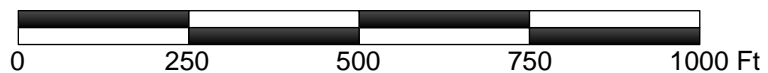
(a) Existing Conditions



Rendering on image from Google Earth Pro

(b) Schematic Rendering of Proposed Conditions

Source: City of Newport Beach, Google Earth Pro, 2009



## Exhibit 8-2 Comparison of Existing and Proposed Groins

CITY OF NEWPORT BEACH • MARINA PARK  
ENVIRONMENTAL IMPACT REPORT

stable beach west of the American Legion. Since its construction between 1958 and 1959, the American Legion marina had been dredged only twice, in 1986 and 1988, for a total of 365 cubic yards. There has been some shoaling throughout the marina since the last dredging.

In summary, based on the experience of the American Legion marina and the numerical model study, the proposed groin for the Marina Park is needed to provide similar protection for the Marina Park marina as the existing groin to the American Legion marina. The new groin wall would also protect both the proposed marina as well as the American Legion marina.

Please see Response to Comment A2-5 regarding the evaluation of shoreline processes that is in the REIR.

#### *Response to Comment A2-8*

This comment expresses concern regarding adverse impacts associated with the new bulkheads. As stated in Section 5.7, the Marina Park Coastal Engineering Study (**Appendix H.2** of the REIR) included an analysis of the existing and proposed groin (bulkhead) walls, wave-loading calculations for the docks, boats, and piles within the proposed marina basin, and analyses of the water quality and sedimentation issues. The proposed bulkheads are allowed under Section 30235 of the Coastal Act because the bulkheads are required to support a coastal-dependent use (i.e., the proposed marina). In general, bulkheads may impact the shoreline in three ways. First, waves reflecting off the bulkhead surface may scour away beach sediments in front of the bulkhead. Second, bulkheads could close off the supply of sand from upper banks that replenishes fine sediment to the beach areas. Third, construction of the bulkheads could cause direct loss of shoreline vegetation and marine habitats.

However, the proposed bulkheads would not pose any of these potential impacts. The proposed bulkheads are mainly confined within the marina basin to provide protection for the perimeters of the marina basin. Waves reflecting off these bulkheads within the marina basin would be confined to within the marina basin and would not affect the shoreline of Marina Park. A portion of the proposed bulkhead would be aligned with the shoreline east of the proposed groin wall where waves are very small and hence there would not be much wave reflecting off the bulkhead. The proposed bulkheads would be in an urbanized area that currently does not have any natural runoff of sediments onto the shoreline; hence they would not block any sand supply to the shoreline. Finally, the proposed bulkheads would not cause any loss of shoreline or vegetation because they would be mainly inside the proposed marina basin, which would be created from land that does not currently have either natural vegetation or shoreline.

In addition, the comment states that an alternatives analysis should be prepared identifying that the proposed project is the least environmentally damaging alternative. Section 6 of the REIR provides a discussion of alternatives to the proposed project. One of the primary objectives of the



Marina Park project is to provide a marina that can be used by coastal visitors for sailing and boating. The removal of the marina from the project description would result in an alternative that does not meet a primary purpose of the proposed project. Based on discussions with the City of Newport Beach Harbors Department, the Marina Park site is the only City-owned coastal land that can accommodate the elements proposed within the park. There is no other City-owned land that could accommodate a marina without the same impacts to intertidal habitat and water quality as have been identified for the proposed project. Therefore, there are no alternative sites that can accommodate the proposed public marina, community center, sailing center, and park facilities, and provide required parking for these elements.

*Response to Comment A2-9*

This comment expresses concern regarding the need for information to substantiate why the new bulkheads need to be constructed.

The need for the proposed bulkheads is discussed in Responses to Comments A2-7 and A2-8. Other sloping land/water interface options were studied (i.e., rock revetments and beach), but they would result in either a reduced and non-functional waterspace, or, if the amount of waterspace is maintained, a substantially reduced public park area. Bulkheads were chosen over other forms of perimeter protection such as riprap because they would take up less land or water space compared to rock revetments and beach. This means that more land can be used for the park for recreational use, or that less dredging (and dredge material disposal) in the marina basin would be required to provide the same docking facilities. The new shoreline bulkhead would connect to the existing bulkhead paralleling the bayfront at the American Legion site (see **Appendix H.2**).

This comment also requested that potential project impacts to the existing coastal processes be evaluated. See Response to Comment A2-5 regarding the proposed project's potential effects on existing coastal processes.

In addition, the comment states that an alternatives analysis should be prepared identifying that the proposed project is the least environmentally damaging alternative. See Response to Comment A2-8.

*Response to Comment A2-10*

This comment expresses concern regarding tidal flushing within the marina and its impact on water quality, and requests clarification concerning why the No Marina Alternative was not chosen. Section 5.7 of the REIR states that the proposed project would not violate any water quality standards or waste discharge requirements with the implementation of Mitigation

Measures MM 5.7-A.1 and MM 5.7-A.2. With regard to the selection of alternatives, see Response to Comment A2-8.

*Response to Comment A2-11*

This comment asks about the docking provisions of the proposed marina for boats under 40-feet. Since the basin is small and rectangular, a typical slip length of 40 ft was chosen for the majority of slips. Boats that are less than 40 feet can use the 40-foot slips. The slips are intended for visiting vessels for short-term, overnight use, and up to a period of 30 days (see Project Description Section 3.4.3). These slips would be on a first come, first serve basis, and would serve any boat length from 15 ft to 44 ft. They could also be used to place two small boats (example: two 18-ft boats, head-to-tail), if needed.

This comment also asks how the 0.59 parking spaces per slip factor was determined. The parking rate is based on the Institute of Transportation Engineers Manual for marinas.

*Response to Comment A2-12*

This comment expressed concern regarding hazards, flooding and erosion that may take place at the proposed project site, and states that an analysis of hazards by a licensed professional will be required by the California Coastal Commission.

The project site is located in an area with benign wind, wave and tidal current conditions (see Response to Comment A2-7, above), hence not at risk of any severe wave attack and wave runup. A wave analysis conducted for the site (**Appendix H.2**) showed that the 100-year return period wave height for the site is 2.4 ft. Docks and piles for the marina basin would be designed to withstand wave loadings based on this design wave condition. Regarding potential erosion for the site, as discussed earlier, review of historical shoreline pictures has indicated that the shoreline where the project site is located has been stable for decades (See response to Comment A2-7), hence the project site is unlikely to subject to future erosion. The coastal engineering study on which these conclusions are based (**Appendix H.2**) was conducted by a licensed professional engineer.

*Response to Comment A2-13*

This comment expresses concern regarding migratory and nesting habitats for other avian species. As indicated in Section 5.3.3 of the REIR, several ornamental trees and shrubs on site provide marginal nesting habitat for migratory birds. Those plants do not provide habitat for federally or state-listed species; therefore, providing a history of nesting on the site by birds is not warranted. Mitigation Measure 5.3-E.1 would further reduce potential impacts on nesting bird habitat.

*Response to Comment A2-14*

This comment expresses a desire for continuous access to the bay through the public tidelands that are leased by the American Legion. Since the area occupied by the American Legion Post 291 is not part of the project site, the request is outside the scope of the REIR.

*Response to Comment A2-15*

This comment expresses concern regarding parking needs that would be generated by the proposed project and the existing parking demands. This comment also requests clarification regarding the proposed on-site parking that would be provided for public access. Proposed parking on the project site would be available for bay front beach users, however, it is not intended for ocean beach parking. On completion of construction of Phase 3 there would be a net gain of 4 parking spaces along 18<sup>th</sup> Street due to the widening of 18<sup>th</sup> Street to allow for parking on both sides of the street. There would be a loss of 13 parking spaces along Balboa Boulevard for a net loss of nine on-street parking spaces overall. This loss would be a result of the installation of the drop-off, pedestrian access at 17<sup>th</sup> Street and vehicular access at 16<sup>th</sup> Street. As indicated in Section 5.11 of the REIR, once the proposed Marina Park is constructed, the 159 parking spaces provided on site would accommodate the parking demand created by those attending the facilities at the park (145 spaces), with a surplus of 14 spaces. The last phase of the buildout of the project would be construction of the park amenities. Therefore, the parking on 18<sup>th</sup> Street and Balboa Boulevard, along with the existing community building and Girl Scout building would remain until the last construction phase of the project requires demolition of these facilities.

*Response to Comment A2-16*

This comment expresses concern regarding the heights of the sail feature on the Balboa Center Complex and the lighthouse and their potential impact on public views. The discussion under 5.1-C and 5.8-B in the REIR discusses that the lighthouse architectural feature would exceed the City's Shoreline Height Limitation policy (35 feet) in the Coastal Zone. However, the analysis concludes, that because the proposed facility is a public use and the architectural feature would provide a semi-transparent focal point in the area, and because the project would remove 900 linear feet of mobile homes that currently block views of Newport Bay from the Balboa Boulevard based on the height and bulk of the proposed features as well as the other features of Marina Park, that the potential visual impact would be less than significant.

*Response to Comment A2-17*

This comment requests clarification regarding the use of the proposed café that would be located in the Sailing Program Building. The café would serve as an ancillary use for persons using the

proposed facilities, including persons staying for short-terms in the marina, but it would be open to residents in the surrounding neighborhood as well. The City expects many area residents to walk to the café, and some area residents to arrive by boat there, given the visitor-serving, short-term slips proposed. The parking demand associated with the café is included in the determination of facility parking spaces at the project site.

*Response to Comment A2-18*

This comment is informing the City that the permits and approvals required by the regulatory agencies such as U.S. Army Corps of Engineers, National Marine Fisheries Service, Regional Water Quality Control Board, California Department of Fish and Game, and State Lands Commission will need to be obtained and submitted with the application for the coastal development permit.

In regards to the comment requesting, “review by the State Lands Commission,” it should be noted that the State Lands Commission is listed as a Reviewing Agency per the State Clearinghouse Data Base and no comments were received from the State Lands Commission. The City will coordinate with the State Lands Commission for a written determination in obtaining a Coastal Development Permit.

**Department of Transportation**

*Response to Comment A3-1*

This letter does not provide any comments on the Draft EIR; no further response is required.

**Department of Toxic Substances Control**

*Response to Comment A4-1*

This comment asks for a discussion of current or historic uses at the project site that may have resulted in the release of hazardous wastes or substances. A description of the current land uses on the project site as well as surrounding the site is provided in Section 5.6.3 of this REIR. As described, the uses that currently are located on the project site and surrounding the site are not uses typically associated with release of hazardous wastes/substances, with the exception of the SCE substation. A regulatory database review, summarized in Section 5.6.3 of the REIR, determined that there were no potential hazardous waste sites that would impact the project site.

The dredged material evaluation (**Appendix G.3**), indicates that, “sediment from the offshore portion of the Area C upper composite represented by Stations 11, 13,14, and 15 would not meet the requirements for beach replenishment or open-ocean disposal due to mercury concentrations

in the sediments. Alternative disposal options including upland disposal or placement in a confined aquatic disposal facility will need to be evaluated prior to dredging this material.”

The upland surface sediment report (**Appendix G.4**) indicates that, with respect to upland soils, “All of the metals were either undetected or detected very near the detection limits. Pesticides, PCBs, PAHs, tributyltin, TRPH, oil and grease, and phthalates were not detected in the analytical composite. Chemical concentrations in the test composite were below the screening threshold for Title 22 leachate testing under Title 22 Section 4.5. The upland soils collected from the top five feet in the Marina Park Mobile Home Park would not qualify as hazardous waste under California State Code and should be acceptable as fill material.”

The site assessment report (**Appendix G.6**) indicates that, “two of the samples contained TPH-cc over 100mg/kg . . . The TPH impacted soil is not expected to be a threat to groundwater or human health... it is recommended that the site be remediated to the more conservative residential standards. Leighton Consulting recommends that areas where soil contamination has been detected above the residential Regional Screening Level (RSL-R) be remediated by excavation and disposal to an appropriate facility.”

#### *Response to Comment A4-2*

This comment states that the Draft EIR should identify the government agency that will provide the appropriate regulatory oversight for the proposed project. The proposed project would be required to obtain a Rivers and Harbor Act Section 10 Permit. This permit is issued by the Army Corps of Engineers, who would have oversight during dredging operations. In addition, based on the Dredged-Material Evaluation provided in **Appendix G.3**, a portion of the dredge material would need to be disposed of at a land disposal location due to mercury concentration. During the dredged material investigation, the USEPA Region IX and USACE-LA Regulatory Division determined that those sediments with mercury concentrations exceeding 1 mg/kg would not be permitted for placement in the open ocean disposal site or the nearshore beach replenishment sites. The sediment with elevated mercury concentrations would be disposed of at a land disposal location; however, disposal alternatives for the surface sediment will be evaluated in the Section 404/Section 10 permit application.

Furthermore, as stated in 5.6-B in the REIR, the proposed structures on the project site may have asbestos or lead-based paint materials. The appropriate regulatory agency to oversee the removal of these materials is the City. If it is determined the building structures contain asbestos or lead-based paint materials, SCAQMD would oversee removals

In regards to the vacated SCE substation site, approximately 300 cubic yards of soil is contaminated by PCBs that would need to be excavated and disposed of at an approved facility. \_



*Response to Comment A4-3*

This comment states that any investigations, sampling, or remediation for the site should be conducted under an approved work plan and overseen by a regulatory agency. As stated previously, the project site may have asbestos and lead-based paint material. The agency responsible for these materials is the City. Please see Response to Comment A4-2 regarding the regulatory authorities for the dredging operations. Upland soils to a depth of 5 feet below ground surface were evaluated following USACE Upland Testing Manual guidance as well as California Code of Regulations (CCR) Title 22.

As indicated in Section 5.6 of the REIR, soil borings in the vicinity of the vacated SCE substation (**Appendix G.6**) revealed some soil contamination within the facility footprint. Approximately 300 cubic yards of soil is contaminated by PCBs that would need to be excavated and disposed of at an approved facility. Testing of soils at the existing mobile home park (**Appendix G.4**) found no evidence of elevated chemical constituents, and the report concluded that the upper five feet of soils would not qualify as hazardous waste under California law.

*Response to Comment A4-4*

This comment states that all closure, certification, or remediation approval reports should be included in the Draft EIR. Soils and sediments were evaluated following USEPA, USACE, and California Code of Regulations guidance; the documentation is provided in **Appendix G**. The specific approval related to the removal of mercury-contaminated marine sediments would likely be part of the U.S. Army Corps of Engineers Section 404/10 permit process, although if further testing determines that the sediments are toxic hazardous waste, the City may need to obtain Waste ID numbers (see Response to Comment A4-8, below). The potential actions associated with possible asbestos and lead-based paint material in onsite structures would be determined prior to approval of onsite demolition activities, and a Notification of Demolition or Asbestos removal would be filed with the SCAQMD as appropriate.

*Response to Comment A4-5*

This comment states that an investigation should be conducted to analyze the release of hazardous materials during the demolition of any buildings, structures, asphalt or concrete-paved surfaces. Mitigation Measure MM 5.6-A.1 indicates that prior to demolition activities, the project proponent shall determine whether asbestos or lead-based paint materials are present within the existing onsite structures and a Notification of Demolition or Asbestos removal would be filed with the SCAQMD as appropriate. If these materials are present, the project proponent shall properly dispose of these materials in a landfill that accepts asbestos and lead-based paint.

*Response to Comment A4-6*

This comment expresses a concern about excavating contaminated soil. Please see Response to Comment A4-2 regarding the dredging of the marine sediments that contain mercury.

Upland soils to a depth of 5 feet below ground surface were evaluated following USACE Upland Testing Manual guidance as well as guidance under California Title 22 (see **Appendix G.4** for the upland soils report). No hazardous substances were found in the upland soils from the proposed marina project area.

If additional fill material is required for construction, soils excavated from below 5 feet below ground surface would be used. This material has been demonstrated as being free from chemical contamination as described in **Appendix G.3** of the REIR.

As discussed in the Leighton report (**Appendix G.6**), soil contamination at the vacated SCE substation site (about 300 cubic yards of PCB contaminated material) would be remediated by excavation and disposal to an appropriate facility.

*Response to Comment A4-7*

This comment expresses concern regarding sensitive receptors during construction and demolition activities. Compliance with applicable state and federal regulations while implementing Mitigation Measure MM 5.6-A.1 would reduce potential human health impacts during demolition of the existing onsite structures.

*Response to Comment A4-8*

This comment provides guidance and states that if hazardous wastes will be generated by the proposed project, a United States Environmental Protection Agency Identification Number (U.S. EPA ID Number) should be obtained. A U.S. EPA ID Number (and a Department of Toxic Substances Control [DTSC] ID Number) identifies each handler of hazardous waste on hazardous waste manifests and other paperwork. The ID Number enables regulators to track the waste from its origin to final disposal (“cradle to grave”). Most hazardous waste generators must have an ID Number before a registered hazardous waste transporter will accept the waste for shipment, and all hazardous waste transporters and permitted treatment, storage and disposal facilities must have ID numbers.

Section 5.6 of the REIR indicates that, with one possible exception, the proposed project would not utilize or dispose of any hazardous materials of reportable quantities, therefore, a United States Environmental Protection Agency DTSC Identification Number or other approvals would not be required. Some of the sediments that would be dredged contain mercury concentrations that may exceed regulatory limits. While the material is not acutely or extremely hazardous, it is

on the borderline of the screening threshold for being a “toxic hazardous waste”. The City of Newport Beach will coordinate with the DTSC to provide a leaching test (WET or STLC) of the material. If the sediment is determined to be hazardous, then the City would apply for an U.S. EPA ID number. This testing would be completed before dredging occurs and materials are scheduled for transport.

In regards to the vacant SCE parcel which is currently owned by SCE and on which levels of PCBs above residential standards were discovered, SCE would apply for the proper regulatory reporting for removals of contaminated soils. The Orange County Environmental Health Agency (designated by the State Secretary for Environmental Protection on January 1, 1997, as the CUPA for the County of Orange) informed the City’s consultant (Leighton and Associates) that the concentrations of PCBs at the site did not warrant reporting to the agency.

Upon the completion of the removal of soils at the SCE site, the City of Newport Beach may solicit a regulatory agency closure letter. In that case, the site remediation report would be submitted to the Orange County Health Care Agency (OCHCA) and an agreement for the voluntary oversight program would be requested. If oversight is requested, the OCHCA would require an approved Remedial Action Plan (RAP) and a workplan prior to site remediation.

*Response to Comment A4-9*

This comment states that if the soil or groundwater is found to be contaminated during the construction or demolition component of the proposed project, the project should be temporarily halted until the appropriate health and safety procedures were implemented. Mitigation Measure 5.6-A.1 includes an assessment of asbestos and lead-based paint materials prior to demolition activities. Furthermore, if unforeseen hazardous materials are present, construction activities would (in accordance with existing regulations) be required to cease to follow appropriate existing health and safety procedures.

*Response to Comment A4-10*

This comment expresses concern regarding prior agricultural, livestock, or related uses of the proposed project site. As stated in Section 5 of the REIR, the proposed project site is located within an urbanized area of Newport Beach. The project site contains no land that is considered to be suitable for farmland, and no agricultural activities are known have occurred on or adjacent to the site.

*Response to Comment A4-11*

This comment states that the DTSC could provide guidance for cleanup oversight through an Environmental Oversight Agreement for government agencies that would not be responsible

parties under CERCLA or a Voluntary Cleanup Agreement. Since the proposed project would not require brownfields cleanup activities, DTSC oversight would not be needed.

### **California Regional Water Quality Control Board**

#### *Response to Comment A5-1*

This comment expresses concern regarding the method of initial dredging or maintenance dredging. The comment also requests clarification regarding the use of a silt curtain within the Bay. Dredging would use either a clam shell or a hydraulic dredge. As stated in Mitigation Measure 5.7-A.1, silt curtains would be one of the best management practices to control suspended sediments during construction activities. The specific location of the silt curtains would be determined during the processing of the Section 401 Water Quality Certification.

It is anticipated that the silt curtains would be installed completely around waterside construction activities, and would connect to adjacent landside termination points along the property, to fully enclose any given waterside construction. Curtains would be required for sheetpile installation for bulkheads and groin walls, dredging, and guidepile installation for the docks. These curtains would surround the equipment barge, as well as the disposal/transport barge. During dredging operations when operations are complete and suspended silt has had a chance to redeposit on the bay floor, the curtains would be temporarily removed to allow the barge and tug boat to depart from the area and return to the site, when the curtains would be re-deployed. The deployment of these curtains would be in strict conformance with the conditions imposed by the permits from the Army Corp of Engineers and the California Coastal Commission.

#### *Response to Comment A5-2*

This comment expresses concern regarding the Basin Plan natural turbidity maximum increases. Mitigation Measure 5.7-A.1 has been revised accordingly.

#### *Response to Comment A5-3*

This comment expresses a desire for more information regarding the disposal location for the dredged soil and any monitoring programs associated with the disposal sites. The Project Description of the REIR identifies five potential sand disposal locations. The specific locations and monitoring would be required as part of the U.S. Army Corps of Engineers Section 10 Rivers and Harbors Act permit. It is anticipated that approximately 3,000 cubic yards of dredge material are not acceptable for ocean disposal and would be required to be dried on-site prior to transport to an approved inland disposal site. Runoff water from this site would be captured and treated, before returning to the bay for disposal. All handling of dredge spoils and runoff water would be strict conformance to State and Federal requirements.

*Response to Comment A5-4*

This comment states that the Regional Water Quality Control Board among one of the permitting agencies. The REIR includes the Santa Ana Regional Board as one of the agencies involved in permitting the proposed project (see p. 3-21).

This comment also states that an assessment of wetland impacts should be conducted. A Draft Wetland Delineation has been prepared (see **Appendix D.4**) and is summarized in Section 5.3.

*Response to Comment A5-5*

This comment states that the project as proposed would not provide no net loss of wetlands. See response A5-4. The project would involve the loss of 0.66 ac of sandy intertidal habitat that would be mitigated. There are no wetlands on-site and therefore the project would not result in a loss of wetlands (see Response A2-1).

*Response to Comment A5-6*

This comment recommends that Total Maximum Daily Loads be discussed as part of the EIR. A chemical analysis on the soils and sediments proposed for dredging in the footprint of the proposed marina has been conducted and the results are provided in the Dredged-Material Evaluation provided in **Appendix G.3** of the Draft EIR. Selenium was undetected in the project site soils and sediments (DL: 0.2 mg/kg). DDT and its analogs (DL: 2.0 µg/kg), chlordane (DL: 0.98 µg/kg), and PCBs (DL: 20 µg/kg) were undetected in the project site soils and sediments.

Within the upland and beach areas from the proposed marina site, priority pollutants were either undetected or detected slightly above the detection limits. In the subtidal portion of the site, surface sediments have mercury concentrations above 1 mg/kg. The underlying sediments have mercury concentrations at or below the detection limits. The sediment face that would remain following dredging is represented by that underlying sediment, which is free of mercury contamination.

Underwater sediments containing mercury would be removed from the site and disposed of at an offsite land disposal location. BMPs would be incorporated as a part of the SWPPP to address sediment resuspension during dredging, drying of sediment for transport, and sediment disposal.

It is not anticipated that the proposed uses of this facility would contribute additional pollutant load to the levels already present in the harbor waters near this site. The City of Newport Beach would incorporate the “Clean Marina Program” and associated BMPs for the operation of the marina. This program has been accepted by the State of California and requires an initial



certification and monitoring program to assure the State that the program is being followed (the program can be downloaded at [www.cleanmarinacalifornia.org](http://www.cleanmarinacalifornia.org)).

The proposed project would implement treatment control BMPs as well as low-impact design (LID) concepts to treat the projects pollutants of concern, including those with associated TMDLs in the Lower Newport Bay. Permeable pavers are proposed to treat runoff from the proposed parking areas. The sub-surface base of the pavers allows for physical and microbial filtering processes to take place thereby removing pollutants such as particulates, organics, hydrocarbons and total suspended sediments, including attached heavy metals (Pratt et al. 1999). When allowed for infiltration into the subsoil and sized accordingly, pervious pavements are highly effective at treating the majority of pollutants in storm water runoff. In addition, vegetated bioswales and bioretention/biocells are proposed to treat runoff from the project site. Landscaped biocells, also known as bioretention zones, are small, vegetated depressions that combine shrubs, grasses, and flowering perennials in depressions and allow water to pool and filter through a minimum of 18 inches of soil where vegetation would uptake nutrients (e.g. nitrogen and phosphorous), microbial contaminants, oil and grease, and pesticides, and sediments and fine particulates can settle out (LFR and Cloak 2005). Based on these proposed features, impacts from storm water pollutants of concern for the proposed project would be less than significant.

In order to reduce the amount of sediment discharged off-site due to construction activities, the Project would implement an effective combination of erosion and sediment control BMPs in conformance with the Statewide General Construction Permit (SWRCB Order No. 99-08-DWQ or subsequent update). During the post-development condition, any sediment and TSS generated from the project would be collected in the proposed vegetated bioswales, bioretention areas, and permeable pavement areas, of which are considered effective for targeting pollutants typically associated with the project. As a result, sediment impacts to water quality are considered less than significant. A preliminary Water Quality Management Plan (WQMP) for the project is presented in **Appendix H.1**.

*Response to Comment A5-7*

This comment states that the proposed project must obtain a general permit for the waste discharge management program. There is no intent or need to install a dewatering system for the construction of the boat basin. Dewatering would be necessary to dry dredge spoil material, prior to transport to an approved disposal facility. Any dewatering required for the dredge material would be in strict compliance with State and Federal requirements.

*Response to Comment A5-8*

This comment states that the Orange County MS4 permit is currently undergoing revisions. The City of Newport Beach understands that the project construction activities, similar to any

construction activities within the County, would be required to comply with any approved revisions to the Orange County MS4 permit.

*Response to Comment A5-9*

This comment states that the General Permit for Storm Water Discharges Associated with Construction Activity is currently under revision. The comment does not express any concern with the content of the REIR; no further response is required.

*Response to Comment A5-10*

This comment expresses a desire for clarification regarding the location of the landscape biocells and the proposed bioswale. **Exhibit C1.01 in Appendix H** of the REIR illustrates the location of the landscape biocells and the proposed bioswale.

*Response to Comment A5-11*

This comment is concerned with the potential for trash and litter from the project site and conveyed to the coastal beaches and inland waters. The City of Newport Beach intends to implement the practices identified in the California Clean Marina Guidebook. The specifics regarding these practices would be provided as part of the project's Final WQMP document during the 401 Certification process.

*Response to Comment A5-12*

This comment requests information regarding how the proposed marina facilities would be designed and operated to prevent the discharge of non-point source pollutants from the vessels visiting the proposed marina. See Response to A5-6, above, which states it is not anticipated that the proposed uses of this facility would contribute additional pollutant loads to those levels already present in the harbor waters near this site.

**NOAA**

*Response to Comment A6-1*

This comment identifies the National Marine Fisheries Service's role in the Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act. No specific comment on the contents of the Draft EIR is provided; therefore, no further response is required.

*Response to Comment A6-2*

This comment describes the proposed project. No specific comment on the contents of the Draft EIR is provided; therefore, no further response is required.

*Response to Comment A6-3*

This comment states that designated habitat areas of particular concern (HAPC) are not afforded any additional regulatory protection under the Magnuson-Stevens Fishery Conservation and Management Act (MSA); however, federally permitted projects with potential adverse impacts to HAPC will be more carefully scrutinized during the consultation process. As identified in Section 5.3 in the REIR, the proposed project would result in a less than significant impact on a Habitat Area of Particular Concern (HAPC); mitigation measures related to water quality and noise would ensure the impact remains below a level of significance.

*Response to Comment A6-4*

This comment identified that the proposed dredging, pile installation, and long-term operation of the marina constitute activities that would adversely affect Essential Fish Habitat (EFH). This comment is correct and the evaluation is provided in Section 5.3 in the REIR and **Appendix D** (Marine Resources Assessment). Mitigation Measures 5.3-A.1 and 5.3-A.2 are recommended to reduce the potential impact to EFH to less than significant.

*Response to Comment A6-5*

This comment expresses concern regarding the spread of invasive alga *Caulerpa taxifolia* through the use of dredging. As indicated in Section 5.3.3 of the REIR and **Appendix D.3**, this invasive species has not been found within Newport Bay despite intensive underwater searches.

The City will conform to the 2008 Caulerpa Control Protocol, which requires survey results to be submitted to NOAA and California Department of Fish and Game (CDFG) within 15 days of completion. This protocol also requires that NOAA and CDFG be notified within 24 hours if *Caulerpa* is identified at a permitted project site.

*Response to Comment A6-6*

This comment states that additional information regarding the beach disposal site will be required. The City understands that during the dredge permit process, more detailed information will be provided. The portion of the dredged material that is considered “contaminated” as described in Section 5.7 of the REIR would be transported to an offsite land disposal site.

The City has collected additional information on the presence of sensitive species and EFH within potential disposal areas (**Appendix D.3**). The Newport Beach shoreline is known California grunion (*Leuresthes tenuis*) spawning habitat (pers. com with Karen Martin, Pepperdine University grunion researcher; 5/18/09 pers. com with R Ware). This species does not have a state or federal listing, but is a known sensitive species due to its use of southern California sandy beaches as spawning habitat that are periodically nourished through onshore and

offshore methods of sand replenishment. In addition, the western snowy plover, a federally-threatened species, and California Species of Special Concern (CSC) inhabits beaches on marine and estuarine shores. This species does not nest along the Newport Beach Peninsula, but is known to nest on Huntington State Beach (Coastal Resources Management, Inc. and Chambers Group, 2003). This species may use the sandy beach shoreline of the Peninsula (pers. com with Kathy Keane, Keane Biological Consultants, May 18<sup>th</sup>, 2009).

*Response to Comment A6-7*

This comment identifies that the proposed pile driving activities have the potential to adversely impact Essential Fish Habitat. Impacts of construction activities on marine resources are discussed in Section 5.3.4 of the REIR.

This comment also states that the specific design of the structural piling was not provided in the Draft EIR. Pile installation is involved in several areas:

- a. *Building piles*: 12 inch square standard building piles. The pile would be jetted to within five feet of tip elevations and then driven with a diesel hammer of 50,000 ft/lb rating, for the final five feet. It is anticipated that the piles would require approximately 20 blows per foot of driving length, in this case for five feet.
- b. *Sheet piles for Bulkhead and Groin Wall*: 10 to 12 inch in thickness, 3 to 8 feet in width, interlocking pre-stressed concrete elements. A maximum of 285 sheet piles (3 ft wide) would be needed to define the basin bulkhead and groin wall. Embedment of these walls below the design dredge depths would be approximately 18 feet to a pile tip elevation of approximately -30.0 ft MLLW. Sheets would be jetted to within two feet of tip elevation and then driven with a diesel hammer of 50,000 ft/lb rating, for the final two feet. It is anticipated that the piles would require approximately 20 blows per foot of driving length, in this case for two feet.
- c. *Guidepiles for the Docks*: 14 to 24-inch pre-stressed concrete round or octagonal piles. The inner boat basin would likely use 14 and 16-inch piles. The outer long dock and 56 ft finger may utilize 18 to 24 inch piles. The geotechnical consultant has analyzed all sizes between 14 and 24 inch, and once designed, the Engineer would select the appropriate sized piles for the given loading condition. A maximum of 50 guidepiles would be needed to support the basin dock systems. Embedment of these piles below the design dredge depths would be approximately 20 feet to a pile tip elevation of approximately -34.0 ft MLLW. Piles would be jetted to within two feet of tip elevation and then driven with a diesel hammer of 50,000 ft/lb rating, for the final two feet. It is anticipated that the piles would require approximately 20 blows per foot of driving length, in this case for two feet.

d. *Gangway Platform Piles*: Up to two platforms may be required for the ADA-compliant gangways. Each platform could require up to 4 piles. It is anticipated that 16 inch or 18 inch piles would be required for these platforms. A maximum of 8 piles, 18 inch octagonal, may be required for these platforms. Embedment of these piles below the design dredge depths would be approximately 20 feet to a pile tip elevation of approximately -34.0 ft MLLW. Piles would be jetted to within two feet of tip elevation and then driven with a diesel hammer of 50,000 ft/lb rating, for the final two feet. It is anticipated that the piles would require approximately 20 blows per foot of driving length, in this case for two feet. One of these two platforms may be eliminated in the final dock layout, depending on cost and layout considerations.

It is envisioned that the following sequencing of events would occur to build the boat basin:

- Initial excavation (approx 5 ft) of the basin with traditional earth-moving equipment.
- Installation of building piles
- Installation of bulkhead and groin sheets
- Installation of tieback anchors and backfill
- Dredging of basin and stockpiling of dredge spoils on-site for drying and transport.
- Build-out of buildings and park
- Installation of floating dock and guidepile installation)

*Response to Comment A6-8*

This comment raises concerns regarding poor tidal flushing of the proposed marina basin, however, the reviewer also supports the use of mechanic devices to improve water circulation for the marine basin. The comment also asks for additional information on the operation and maintenance of the Oloids and raises concerns about potential interaction of the Oloids with marine life.

The marina is located within a very low depositional environment. Analysis has indicated that the need for project maintenance dredging would be minimal throughout the life of the marina; see Response to Comment A2-7 and Section 5.3 of the REIR for discussions of maintenance dredging.

The Oloid, named for the geometric shape of its paddle, uses a unique driving mechanism that rotates the paddle with the effect of two “fish tails” working together to produce a directional flow and circulation. The Oloid is available in two basic models, OLOID 200, and OLOID 400.



For Marina Park, the larger model OLOID 400 would probably be used. The OLOID 400 is powered by a 230V three-phase AC motor. The systems Control Box includes an inverter that allows it to be connected directly into a standard 115V electrical source. No special connections or hook-ups are required. The OLOID 400 is powered by a single one-half horsepower motor and uses about 250 watts. The standard OLOID configuration is designed to be installed with pontoons floating on the surface of the water. Alternatively, the unit can be mounted to a fixed structure, or be fully submerged and out of sight. For the Marina Park marina basin, the Oloids would be mostly likely to be mounted below the decks near the ends of the docks.

Similar concern about the interference of Oloids with marine life was raised on a pilot study at Baby Beach, Dana Point Harbor in 2005. For that study, six Oloids were installed at Baby Beach from June through September 2005 to test whether the Oloids could improve water circulation and reduce bacteria levels at the beach. Each of the six Oloids was enclosed in a cage to minimize its interaction with marine life. **Appendix H.3** provides a summary of Oloids as water quality enhancement devices and shows a picture of an Oloid with its protective cage used for the Baby Beach study. The regulatory agencies at that time had accepted that enclosing the Oloid with a cage was adequate to minimize interference of the Oloids with marine life and had granted permit for the installation of six Oloids at Baby Beach. For the Marina Park marina basin, similar cages can be used to enclose the Oloids to minimize interaction with marine life.

Regarding maintenance for the Oloids, experience learned from the Baby Beach Pilot Study revealed that the Oloids could operate smoothly for at least four months with minimum maintenance. At the end of the pilot study, some marine growths were found on the Oloids and the cages, and some of the holes of the cages were clogged by marine debris. If the Oloids were used to improve water circulation for the Marina Park marina basin, an inspection and maintenance schedule would be established for removing marine growths and other debris. It is recommended for the first year, the Oloids should be inspected once every three months, and the frequency for inspection after the first year would be adjusted based on findings of the first year's inspections.

#### *Response to Comment A6-9*

This comment expresses concern regarding the periodic discharge of various pollutants, including oils, greases, and other wastes, which negatively impact marine life. As indicated in Section 3.4.3 of the REIR, a Marina Management Plan would be implemented to ensure that the water quality and marine resources are protected.

This comment also states that antifouling paints used on boats release large amounts of copper, which affects marine organisms. The City agrees with NMFS, and would include the use of non-toxic alternatives to copper-based antifouling hull paints in the Marina Management Plan.

*Response to Comment A6-10*

This comment is concern regarding the potential effects of construction activities on marine mammals. The discussion under 5.3-A indicates that demolition and construction activities could potentially affect Newport Harbor marine resources, including marine mammals; mitigation measures are proposed to reduce impacts, but the City understands that based on the demolition and construction activities, a permit may be necessary under the MMPA from NMFS.

*Response to Comment A6-11*

This comment recommends that additional information regarding underwater noise during construction activities and its affect on marine mammals in the project vicinity be provided.

The REIR (Section 5.3) contains additional information, summarized from the material presented in **Appendix D.2** and set forth in full below, regarding the effects of noise on marine mammals and fish. Dredging and pile driving activities would be a minimum of 250 feet (76 meters) from the nearest vessels in Mooring Area H anchorage. Infrequently, sea lions (and/or harbor seals) may swim to this section of the harbor, and may, on occasion, haul out on improperly-maintained vessels.

*Pile Driving.* Pile driving in the air and water could cause seal lions to temporarily move farther away from these activities, such as to other areas of the bay, although the sea lions are anticipated to adapt to noise and continue to be present in the general area of marina construction. It is expected that pile driving and dredging activity would occur during a relatively short-period (two months), which limits the potential for adverse effects, if any to occur. Breeding would not be affected because sea lions do not breed in the Harbor. Sound pressure waves in the water caused by pile driving could temporarily affect the hearing of marine mammals (primarily sea lions) if swimming near the proposed marina construction site.

The following information is extracted the Port of Los Angeles, Pacific L.A. Marine Terminal LLC Crude Oil Terminal Final SEIS/SEIR 3.3-23 and 3.3 24 in regards to the NMFS comments on the effects of noise in pinnipeds relative to pile driving in L.A. Harbor.

“Pinnipeds appear to have greater tolerance to noise levels than cetaceans. Kastelein et al. (2006) demonstrated that captive seals avoid zones where the sound pressure levels were louder than 107 dBrms (re 1  $\mu$ Pa), but noted that it is possible that in the wild, seals may tolerate higher levels, in order to get food, escape predators, or stay with a pup. Finneran et al. (2003) found no measurable Temporary Threshold Shift (TTS) at sound pressure levels up to 178 to 183 dB (re 1  $\mu$ Pa) for California sea lions, a sea lion, harbor seal, and northern elephant seal at sound pressure levels over periods of 25 to 50 minutes. Increasing the exposure duration from 25 to 50 minutes had a greater effect on threshold shifts than increasing the exposure level from 80 dB original sound source level (SL)

(137 to 159 dBrms re 1  $\mu$ Pa) to 95 dB SL (152 to 174 dBrms re 1  $\mu$ Pa); SELs resulting in TTS onset ranged from about 183 to 206 dB (re 1  $\mu$ Pa<sup>2</sup> s). Kastak and Schusterman (1996) reported TTS in California sea lions exposed to airborne noise from nearby construction.

Pile driving produces noise levels of 175 to 205 dBrms 177 to 220 dB (re 1  $\mu$ Pa) at 33 ft (10 m) depending on the material and size of the piles (Caltrans 2007, Hastings and Popper 2005). Caltrans (2007) data indicate the sound level for the proposed steel piles could be as high as 195 dBrms at 33 ft (10m). In comparison, an underwater sound level of 180 190 dBrms (re 1  $\mu$ Pa) has been designated as the 12 level A harassment level for pinnipeds (Federal Register 2005), representing a 13 potential effect level for marine mammals occurring close to construction noise 14 sources in the Outer Harbor.

Observations during pile driving for the San Francisco-Oakland Bay Bridge East Span seismic safety project showed minimal response in harbor seals while sea lions swam rapidly out of the area (Caltrans 2001). In water, sound transmission loss is between 3 and 6 dB per doubling of distance, with approximately 4.5 dB per doubling of distance in nearshore waters (Vagle 2003). However, at distances of less than about 330 feet (100 m), the transmission loss (rate of attenuation) can be less (Caltrans 2007). For this project, marine mammals such as pinnipeds could experience sound levels approaching Level A harassment levels at around 100 m (330 feet) from the pile driving. This estimate accounts for the size of the largest steel piles, the power of the hammer that would be required to drive them, the lower rate of attenuation close to the pile, and uncertainty in the sound propagation rate that depends on site-specific characteristics (Caltrans 2007)."

Few, if any, individual sea lions or marine mammals would be expected the Marina Park construction site. As discussed in the EIR, any sea lions or other marine mammals present would not be harmed, because they would likely either move out of range of sound produced by pile driving, or they would adapt to expected sound intensities. The effect would be of short duration for each pile, that would occur infrequently over a two-month period during marina dredging and construction. In addition, the time to drive the piles (2 months) in Newport Harbor is expected to reduce the potential for pinnipeds to be present in the project area. The size of the piles to be driven for the Marina Park project (16 and 24 inch piles are smaller in diameter than those typically used for commercial port shipping operations (see above analysis), and therefore, the sound intensity produced for the Marina Park Project is likely to be less than that observed in the Port of Los Angeles.

Based on observations at the Marina Park project site, sea lions tend to be present in the spring and summer, and not during the late autumn or winter. Therefore, it would be advisable for the City to drive piles and (conduct dredging operations) during the late-autumn to winter period to lessen the potential for pinnipeds to be affected by pile driving (and dredging) operations.

To minimize impacts to marine mammals, the City has added a mitigation measure to the Marina Park project (MM 5.3-A.2 in the REIR) that requires slowly ramping up pile-driving activities

(referred to as a “soft start”) at the start of pile-driving activities (at the beginning of the day and at restarting of construction after lunch breaks or other pile driving interruptions of longer than 15 minutes).

The operation of the hammer at 40 to 60 percent energy level during the soft start of pile driving is expected to result in similar levels of noise reduction (40 to 60 percent) underwater. Likely sea lions would swim away from the area, after pile driving has occurred. While impacts from pile driving on marine mammals were found to be less than significant in the Marina Park EIR, this mitigation measure would further reduce the potential impact. The soft-start approach to pile driving would also prevent “take” of marine mammals, and therefore, the City believes that an Incidental Harassment Authorization under MMPA would not be required.

*Response to Comment A6-12*

This comment recommends that additional information on why dredging would not have an impact on transiting pinnipeds and what types of deterrence measures would be implemented to prevent animals from hauling out in the marina.

Both hydraulic and clamshell dredging would be used for the Marina Park project. Hydraulic dredging would be used to remove the upper layer of fine material and clamshell dredging would be used to remove the deeper, denser portions of the material.

The measured sound exposure levels of a clamshell dredge may range between 75-88 dBA (re 20  $\mu$ Pa) at 50 feet. Animals have been observed flushing from haul out sites at a sound exposure level of less than 100dBA, and it is possible that marine mammals may modify their behavior as a result of the noise produced by the pile driving and dredging operations. (Source: NMFS comment).

The duration of such noise would be short, 30 days and the work at each site would be in different locations and at different times. Based on Port of Los Angeles responses to comments on the Port of Los Angeles Channel Deepening Project EIR/EIS, NMFS Comment NMFS 08, page 14-08, April 2009) underwater noise from the clamshell dredging would be 150-162 dB (re 1  $\mu$ Pa) in LA Harbor, which is below the designated level A harassment threshold of 190 dBrms (re 1  $\mu$ Pa) for pinnipeds. This would imply that clamshell dredging effects on pinnipeds, or any other marine mammals near the Marina Park Project site, would be less than significant.

Hydraulic dredging activity at the Marina Park project site would result in less sound production than clam shell dredging, and therefore, would not result in significant sound effects on sea lions or other marine mammals.

*Response to Comment A6-13*

This comment expresses concern regarding marine mammals animals being flushed from haul out sites due to increased sound exposure levels during pile driving. See response A6-12 above.

*Response to Comment A6-14*

This comment expresses concern regarding the deleterious effects on marine mammals through the exposure to loud sounds, such as pile driving. This comment states that the National Marine Fisheries Service is currently developing safety criteria for marine species exposed to underwater sound. However, NMFS has determined through past studies that a noise level of 180 dB re 1  $\mu\text{Pa}_{\text{RMS}}$  (190 dB re 1  $\mu\text{Pa}_{\text{RMS}}$  for pinnipeds) as the impulse sound pressure level that can be received by marine mammals without injury. See response A6-12 above.

*Response to Comment A6-15*

This comment offers assistance to the City related to the development of the marine biological mitigation plan and recommends that the applicant consider including design features for low-lying docks on the water to deter sea lions from hauling out.

The City will work with NMFS to ensure that project design features of the Marina Park Project will include design features to low-lying docks on the water, to non-lethally deter pinnipeds, specifically sea lions, from hauling out. In addition, the City has a City-ordinance, and an in-place program for all commercial and private vessels designed to deter marine mammals from hauling out on vessels. These are described on the City's website.

Based on the expected levels of impacts to marine mammals for the project, mitigation measures identified for reducing pile-driving effects on marine mammals, sound noise levels below that expected to be below that identified as harassment during dredging operations, and current City of Newport Beach measures to ensure sea lions would not haul out in the project area, the City believes that an application to the NMFS for an Incidental Harassment Authorization, under Section 101 of the Marine Mammal Project Act is not necessary.

*Response to Comment A6-16*

This comment states that in the event of a construction vessel collision with a marine mammal, Mr. Joseph Cordaro, the National Marine Fisheries Service Southwest Regional Office's Stranding Coordinator must be contacted immediately. The comment does not express any concern with the content of the Draft EIR; no further response is required. In the event of a construction vessel collision with a marine mammal, the City would contact Mr. Cordero, NMFS as noted and would submit a report to the NMFS Southwest Regional Office.

**NOAA***Response to Comment A7-1*

This comment request clarification of the reference to 0.13 acre on page 41 of the Marine Biological Impact Assessment in **Appendix D** of the Draft EIR. The reference is on page 42, and the information is incorrect. The Marine Biological Impact Assessment has been revised (see **Appendix D.2** of the REIR).

*Response to Comment A7-2*

This comment asks if the size of the concrete piling can be provided. See Response to Comment A6-7. Additional design details will be provided during the Section 10 and Section 404 permit processing.

*Response to Comment A7-3*

This comment asks if the potential for maintenance dredging still exists with the implementation of the mechanical devices to improve water quality. The presence of the mechanical devices is expected to reduce the need for maintenance dredging; however, maintenance dredging is still expected to be needed in the future. As maintenance dredging is needed in the future, the City would obtain the necessary dredging permits through the regulatory agencies.

*Response to Comment A7-4*

This comment asks what type of long-term monitoring and maintenance would be required for the proposed mechanical devices. See Response A6-8.

*Response to Comment A7-5*

This comment asks for the location of Mitigation Measure MM 5.6-A.2 in the Draft EIR. The reference to Mitigation Measure MM 5.6-A.2 was incorrect: there is no such mitigation measure, and the reference has been corrected in the REIR.

**OCSD – James Herberg***Response to Comment A8-1*

This comment requests that the Draft EIR address increased traffic to 15<sup>th</sup> Street through the alley parallel to Balboa Boulevard. The alley is a secondary access to the approximately 133 parking spaces adjacent to the Balboa Center Complex. As shown on Table 5.11-3, the proposed uses would result in a maximum of 46 peak hour trips to the site (i.e., via the 16<sup>th</sup> Street entrance). Although the proposed parking lot includes an adequate number of spaces to accommodate the

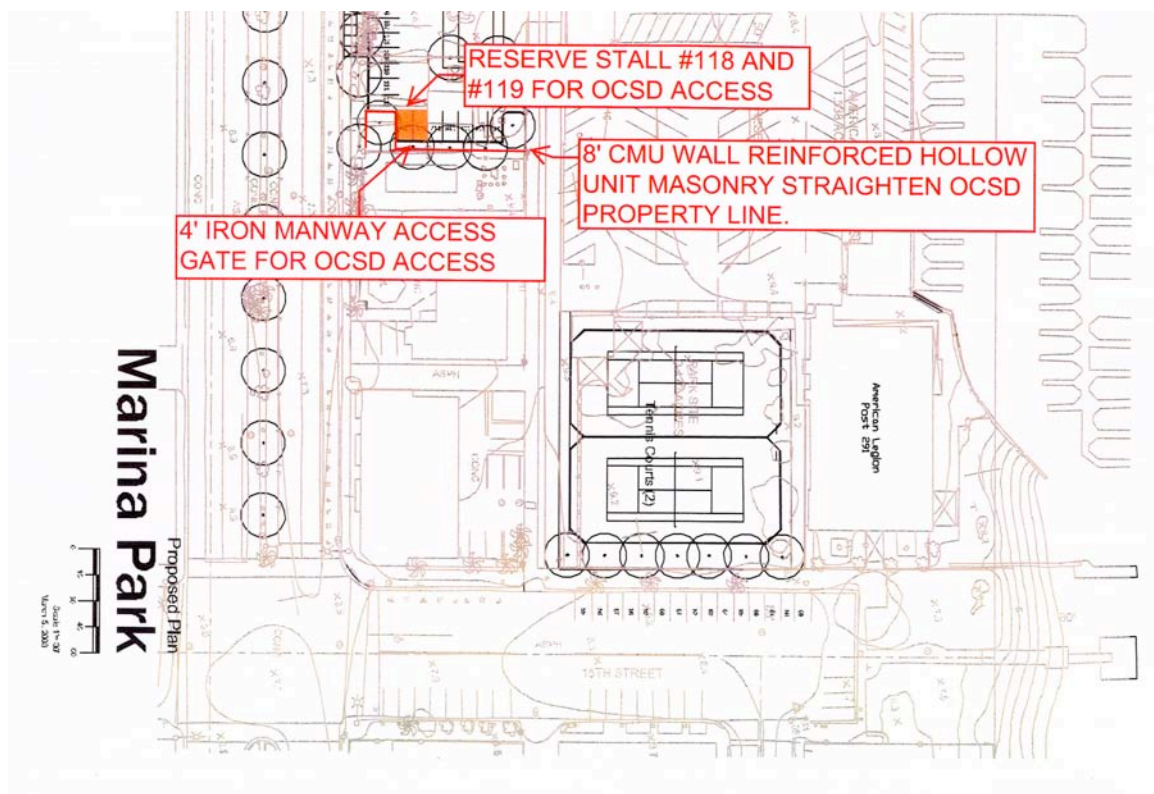
proposed uses, it is anticipated that there would be increases in traffic along the alley that parallel Balboa Boulevard. The existing alley has adequate capacity to accommodate potential increases in traffic. In regards as to how this increased traffic would impact access to the OCSD pumping station refer to Response to Comment A8-3, below.

#### *Response to Comment A8-2*

This comment states that the Orange County Sanitation District is in agreement that the proposed project would not adversely impact the OCSD sewer system. The comment does not express any concern with the content of the Draft EIR; no further response is required.

#### *Response to Comment A8-3*

This comment expresses concern regarding potential access restrictions to the existing parking in the alley to access the pumping station. The City has notified OCSD at various stages of planning the Marina Park project to keep OCSD informed of the project design. The city received an exhibit prepared by OCSD dated March 5<sup>th</sup> 2009 that outlined the request for enhanced access to the OCSD pump station (see below).



Currently, access to the pump station for maintenance activities occurs through the alley from 15<sup>th</sup> street. A maintenance truck currently parks in the alley to service the pump station. This does not create a traffic issue as the alley dead ends near the existing pump station. Flow-through traffic in the alley is currently blocked by an existing sliding chain link gate that provides privacy for the Marina Park Mobile Home residents and fire department access. The construction of the full buildout of the Marina Park project would allow traffic to flow through the alley as the sliding chain link gate would be removed. A maintenance truck parked in the alley would block flow through traffic. On April 15<sup>th</sup>, Dave Webb assistant Public Works Director met with Chuck Windsor of OCSD to discuss the Marina Park project. The city is agreeable to assist with resolving the access issue by considering access through the future parking lot or by other means. A final design of exactly how this access would occur will be included on the final project plans. For example, the access point could be moved closer to the alley. These are design issues and in terms of resolving OCSD access to the pump station the city is in agreement with OCSD that a solution can be attained.

At the time this comment was written, Phases I and II of the project were not proposed by the City. The City of Newport Beach is currently in negotiations to purchase the vacant parcel of land owned by Southern California Edison. By the time Phase I and II are constructed the city could provide temporary parking for OCSD on this vacant parcel. The vacant parcel currently has a gate that is accessed from the alley and is adjacent to the OCSD pump station's access gate.

#### *Response to Comment A8-4*

This comment requests that the City dedicate parking stalls 118 and 119 for joint-use parking for the City and OCSD staff. Please see Response to Comment A8-3 regarding the provision of parking for OCSD staff.

#### *Response to Comment A8-5*

This comment is concerned about homeland security associated with general access to the pumping station and requests a block wall between the parking lot and the OCSD Pumping Station. The proposed project includes an 8-foot block wall between the pump station and the proposed parking (the wall will be shown on the engineering plans). The comment also states that an access gate needs to be provided. Currently, the access gate is along the alley. If OCSD would like to relocate the existing access gate, then the City will work with OCSD.

#### *Response to Comment A8-6*

This comment requests that a small portion of the current SCE parcel be available to OCSD for parking and odor facilities. The city is in conceptual agreement with OCSD's future plans to install an Odor Control Station adjacent to the Marina Park project, and will work with OCSD



staff. This future OCSD project would require a separate CEQA analysis from the Marina Park project.

*Response to Comment A8-7*

This comment identifies the potential need for odor facilities at the OCSD Pumping Station. Please see Response to Comment A8-6 regarding odor facilities.

*Response to Comment A8-8*

This comment states that page 5.12-2 of the Draft EIR does not mention the existing OCSD 15<sup>th</sup> Street pump station. The REIR has been revised to reflect the presence of the pump station.

*Response to Comment A8-9*

This comment states that page 5.12-2 of the Draft EIR needs to be amended to reflect the current design capacity for Plant No. 2. Please see Response to Comment A8-8 for the revisions to the design capacity.

*Response to Comment A8-10 to 11*

This comment states that the Draft EIR needs to be amended to reflect the current design capacity for Plant No. 2. The REIR reflects the current design capacity of 168 mgd.

*Response to Comment A8-11*

This comment states that the Draft EIR needs to be amended to reflect the current design capacity for Plant No. 2. The REIR has been revised to reflect the current design capacity of Plant No. 2.

*Response to Comment A8-12*

This comment asks that the contact for the Orange County Sanitation District should be updated to show Mr. Patrick McNelly, Principal Staff Analyst. This comment is noted.

**OCSD – Patrick McNelly**

*Response to Comment A9-1*

This comment asks that the information regarding the OCSD treatment capacity and actual flow at Treatment Plan No. 2 in Huntington Beach be revised to reflect the accurate capacity levels. Please see Response to Comment A8-8 regarding the revisions.

**City of Irvine – Sherman Jones***Response to Comment A10-1*

This comment suggests that the Executive Summary include a description of the existing land uses. A discussion of the existing land uses may be found in Section 3.3 – Existing Conditions and Section 4.1 – General Description of Environmental Setting of the REIR.

*Response to Comment A10-2*

This comment suggests that site plans depicting the existing conditions should be included in the Executive Summary. This comment also suggests that **Exhibit 3-2** be revised to depict the end of Balboa Peninsula. Exhibit 3-2 provides sufficient context for the reader to understand the location and context of the site. **Exhibit 3-3** provides an aerial photograph of the project site as it exists now and depicts the current land uses on the site as well as immediately adjacent to the site.

*Response to Comment A10-3*

This comment expresses concern regarding the accuracy of the Traffic Analysis associated with the relocation of the mobile homes. The mobile homes would be demolished and would not be relocated. There are no plans for relocating the existing mobile homes, therefore, there is no need for a revised Traffic Analysis.

*Response to Comment A10-4*

This comment expresses concern regarding the first paragraph on Page 3-2 of the Draft EIR and the potential for increased traffic from the removal of the boat launch located at 18<sup>th</sup> and Bay Avenue. The proposed project would not remove the boat launch.

*Response to Comment A10-5*

This comment expresses concern regarding circulation problems associated with the two dead end parking aisles in the parking lot adjacent to the proposed marina. The referenced parking aisles belong to the American Legion and are not part of the proposed project. Accordingly, no further response is required.

*Response to Comment A10-6*

This comment expresses concern regarding pedestrian access between the community building and the tennis courts, and the sailing building and the marina. The pedestrian access between the community building and the proposed tennis courts would be along 15<sup>th</sup> street via Balboa Boulevard. The sailing building and the marina would be located adjacent to each other. The pedestrian access between the two would be provided by walkways.

*Response to Comment A10-7*

This comment expresses concern regarding the need for an amendment to the Zoning Code for the proposed architectural features that extend higher than 35 feet. A Zoning Code amendment is not required because the City has exempted itself from the provisions of its own zoning ordinance. This comment also suggests that additional text should be added to discuss the other permits that would be required. A list of the responsible required permits and responsible agencies is provided in Section 3.5 Project Approvals.

*Response to Comment A10-8*

This comment requests clarification regarding any opposition that may have been expressed by the American Legion Post 291. To date, there has not been any opposition by the American Legion Post 291, and they did not provide any comments on the previous Draft EIR. Veteran's Park, located adjacent to the American Legion Post 291, is a public park. Activities that have occurred at Veteran's Park in the past could be held at Marina Park.

This comment also asks if there has been any opposition by the mobile home owners. To date, no residents of the mobile homes have presented any opposition to the proposed project, and they have not provided any comments on the Draft EIR. Note that actually there are no mobile home owners at the Marina Park site: the mobile home residents currently lease the mobile homes and land space, both of which are owned by the City of Newport Beach.

*Response to Comment A10-9*

This comment expresses concern regarding the methods that were used to assess the traffic volumes associated with the cumulative projects and the trip distribution. The list of related projects (including approved and proposed projects) is provided in **Table 4-1** in the REIR. The uncompleted portion of approved projects is added to background traffic in the traffic report, while proposed projects are analyzed as "cumulative" projects. The City's traffic model was used to distribute the traffic volumes; the model is available for review at the City of Newport Beach Public Works Department.

*Response to Comment A10-10*

This comment expresses concern regarding the intersection capacity utilization (ICU) analysis at Newport Boulevard and Coast Highway. The City's Traffic Phasing Ordinance (TPO) analysis is applied to "primary intersections" in the City of Newport Beach. The "intersection" of Newport Boulevard and Coast Highway is grade separated, with the only conflicting movements being the southbound left, southbound right, eastbound through, and westbound through movements that are controlled by a signal. Therefore, the City has applied the TPO analysis to that portion of the

Newport Boulevard/Coast Highway “intersection”. All other movements between the two highways are free movements that are not considered part of the signalized intersection.

This comment also states that Newport Boulevard at West Balboa Boulevard should be evaluated. The City’s TPO analysis applies to primary intersections within the City. That intersection is not a primary intersection, regardless of the configuration of the intersection. Therefore, the intersection was not identified as a study intersection, and the TPO one percent and ICU analysis were not performed at that location.

*Response to Comment A10-11*

This comment expresses concern that the traffic volume data presented for the intersection of Newport Boulevard and Coast Highway appears to be under-represented on Table 5.11-4 of the Draft EIR. The TPO analysis at the grade-separated Newport Boulevard and Coast Highway “intersection” applies to the movements controlled by the signal, which consists of the southbound left, southbound right, eastbound through, and westbound through movements. The eastbound right-turn and westbound right-turn volumes are shown as part of the signalized intersection, they are free movements that are not actually controlled by the signal. Trips from the proposed project that travel on Newport Boulevard at Coast Highway are added to the northbound free through movement, the northbound free right-turn movement, the southbound free through movement, and the westbound free right-turn movement.

- The northbound through movement on Newport Boulevard is a grade-separated movement; therefore, the project trips northbound on Newport Boulevard do not travel through the signalized intersection analyzed in the City’s TPO analysis.
- The southbound through movement on Newport Boulevard is a grade-separated movement; therefore, the project trips southbound on Newport Boulevard do not travel through the signalized intersection.
- The TPO One Percent Analysis compares peak hour project trips to the approach volume (total of left-turn, through, and right-turn). As shown in the calculation sheet in Appendix C of the Traffic Study (**Appendix K** of the REIR), the total westbound approach volume is 1,098 during the AM peak hour, one percent of which is 11. The AM number of project trips added to this approach is five during the AM peak hour, less than one percent of the volume on the westbound approach. Similarly, the westbound approach volume during the PM peak hour is 2,411, one percent of which is 24. The project would add 0 trips to this approach during the PM peak hour, less than one percent of the peak hour volume (“Yes” in the right column of **Table 5.11-4** in the REIR). Accordingly, no ICU analysis at this location is required.

- As shown on **Figure A-1** (Peak Hour Project Trips) of the Traffic Study in **Appendix K**, the project trips oriented toward the west on Coast Highway travel along Balboa Boulevard rather than Newport Boulevard. Therefore, the two AM peak hour project trips from the west are included as an eastbound right-turn at the Balboa Boulevard/Superior Avenue and Coast Highway intersections, and do not travel through the Newport Boulevard/Coast Highway intersection. The number zero shown in **Table 5.11-4** for the AM peak hour eastbound approach at Newport Boulevard/Coast Highway is correct. Even if some or all of these trips from the west on Coast Highway were to travel along Newport Boulevard instead of Balboa Boulevard, the AM peak hour eastbound approach volume at Newport Boulevard/Coast Highway is 2,562, one percent of which is 25. The project trips would be well below one percent of the eastbound approach and no ICU analysis would be required.

*Response to Comment A10-12*

This comment expresses concern regarding the slight differences between the existing, background, background plus cumulative, and background plus cumulative plus project scenario for the Newport Boulevard and Via Lido intersection and the Newport Boulevard and 32<sup>nd</sup> Street intersection. There would be a very small increase in the peak hour volumes at these two intersections as a result of approved, cumulative, and the proposed projects, and this increase is mainly to the north/south through movements on Newport Boulevard, which has two or three lanes in each direction. The addition of a low volume of traffic (35 trips or less) to the critical movements that have two or three lanes results in a correspondingly small increase in the ICU value (i.e., 0.01 or less). Under the latest TPO analysis, the project passes the one percent test at these two intersections and no ICU analysis was required.

*Response to Comment A10-13*

This comment expresses concern regarding an increase in traffic from trips generated by the proposed project through the rental of sailboats, canoes, kayaks, and other watercraft. This comment also suggests that additional text should be included to discuss the amount of traffic that would be generated by the proposed project. Section 3.4.3 indicates that watercraft would be available for rental. **Appendix K** – Traffic Analysis of the REIR incorporates all of the programs and activities anticipated to be associated with the proposed project.

*Response to Comment A10-14*

This comment expresses concern regarding the use of tickets or fines for the metered self-parking and the potential for a queue to take place within the parking lot. As explained in 5.11-E, 145 parking spaces would be required for the proposed project and 159 parking spaces would be provided. The provision of 14 surplus parking spaces would help reduce the potential for a queue

to form at the proposed project site. Furthermore, the provision of a drop off area on Balboa Boulevard would further reduce the need for a queue to take place. **Appendix K.1** includes various parking-management alternatives and recommends the incorporation of a Parking Management Plan (which is part of the project, as described in Section 3.4.3). Details regarding the Parking Management Plan would be determined during the final design of the project.

*Response to Comment A10-15*

This comment expresses concern regarding the lack of discussion regarding the installation of gates at the parking lot. This comment also suggests that attendants be used to monitor the number of parking spaces that are occupied. The proposed project provides 159 parking spaces and does not propose the installation of gates. **Appendix K.1** includes various parking-management alternatives; as described in Section 3.4.3, a Parking Management Plan that would incorporate one or more of those alternatives is included as part of the project. Details regarding the Parking Management Plan, including the possible use of gates and attendants, would be determined during the final design of the project.

*Response to Comment A10-16*

This comment expresses concern regarding the increase in traffic due to the removal of the boat launch on 18<sup>th</sup> Street. The proposed project does not include the removal of the boat launch, as described in Response to Comment A10-4.

*Response to Comment A10-17*

This comment expresses concern regarding the lack of information regarding climate change and suggests that the Draft EIR address the requirements established by AB 32. Climate change and greenhouse gases are evaluated in issue area 5.2-I of the REIR.

**Environmental Quality Affairs Citizens Advisory Committee (EQAC)**

*Response to Comment A11-1*

This comment asks if the project-specific determination in 5.2-I should be potentially significant. The project would result in less than 1,600 metric tons of CO<sub>2</sub>e annually, which is below the City's threshold of significance, and therefore the impact would be less than significant.

*Response to Comment A11-2*

This comment asks if the significance determination after mitigation for 5.4-A should be no impact. This comment is correct for project specific and cumulative impacts. The REIR reflects this change.

*Response to Comment A11-3*

This comment asks how 5.5-D could be potentially significant prior to mitigation and no impact after mitigation when there are no mitigation measures proposed. The REIR has rectified this inconsistency.

*Response to Comment A11-4*

This comment expresses concern that construction activities may cause an impact to the implementation of the City's adopted emergency response plan or emergency evacuation plan. Construction activities on the project site would be phased; demolition of mobile homes (coaches) would occur during Phase 1. The demolition material would be hauled to an Orange County Landfill (i.e., Frank R. Bowerman Landfill). In Phase 3, the remaining structures would be demolished (and material hauled to the landfill) and the proposed marina would be constructed. Most of the excavated and dredged material would be placed on the project site or on a barge for sand replenishment of the City's beaches. There are approximately 3,000 cubic yards (approximately 150 truck trips) that would need to be exported offsite to a landfill.

After excavation, dredging, and grading of the project site, additional construction equipment would be transported to the project site for construction activities. The construction equipment is expected to be staged on site so that the equipment would not need to be transported offsite on a periodic basis. Given that Balboa Boulevard is currently a four-lane roadway with two lanes in each direction, the construction vehicles that would access and depart to/from the project site are expected to periodically utilize up to one lane in each direction. Although many trucks departing the project site could be initially slow-moving, the trucks would still have the ability to leave the area once on the roadway system. Those trucks that remained on the project site would not need to depart the site in an emergency and would not adversely affect emergency response.

*Response to Comment A11-5*

This comment asks how 5.8-B could be less than significant prior to mitigation and no impact after mitigation when there are no mitigation measures proposed. The REIR rectifies this inconsistency.

*Response to Comment A11-6*

This comment asks how 5.10-D could be a beneficial impact prior to mitigation and no impact after mitigation when there are no mitigation measures proposed. The REIR rectifies this inconsistency.

*Response to Comment A11-7*

This comment asks if the existing mature trees at the Veteran's Park can be saved. The existing mature trees at the existing Veteran's Park would need to be removed. However, but the final design of the landscape plan has not been completed, and the cost to potentially relocate these trees is not known at this time. It may prove to be possible to relocate the trees onsite.

*Response to Comment A11-8*

This comment states that the proposed tennis courts would be closer to existing residences than the existing tennis courts. The proposed tennis courts would be closer to the existing residences east of 15<sup>th</sup> Street than to the existing residences south of Balboa Boulevard and across from the existing tennis courts. As shown on **Exhibit 3-6** of the REIR, the three trees that are located along the existing 15<sup>th</sup> Street sidewalk would remain and would provide some, but not complete, screening of night lighting at the tennis courts. **Exhibit 3-6** also shows new trees located on the east side of the tennis courts to further reduce the light and glare that could be generated from the tennis courts. The tennis courts lighting would be on until 10 pm. Light would be contained within 12-foot-tall vinyl tennis court fencing and would be directed on to the courts to minimize spillover lighting to the maximum extent possible.

An additional comment concerned the potential noise, light, and glare impacts from the proposed tennis courts on the guests at the American Legion Hall. Currently, Veteran's Park is a public park that does not have lighting and can be used by the residents of Newport Beach as well as visitors. Given that Veteran's Park does not have active recreational amenities, it is considered a passive park. The conversion of the public park to an active recreation would result in an incremental increase in noise; as indicated in 5.9-C, recreational noise sources are intermittent and would not be expected to substantially contribute (i.e. an increase of 3 dBA or more) to ambient noise levels in the area. The comment expresses concern regarding the additional light from the proposed tennis courts adjacent to the American Legion Hall. The tennis court fencing would be at least 12 feet high and would provide privacy and blockage of wind and light. With the combination of fence screen and lighting designed to reduce spillover, the tennis court lighting would not directly affect the one-story American Legion building. Section 5.1 of the REIR finds the impacts of light and glare to be less than significant, since the existing project site already has lighting.

*Response to Comment A11-9*

This comment expresses concern regarding the height and new light source from the proposed lighthouse. As discussed in 5.1A through 5.1-D of the REIR, the impacts of the proposed lighthouse on the existing visual character would be less than significant. The lighting proposed for the lighthouse would be of a low wattage light source, of less intensity than the existing street



lights in the area, with the intent to provide a glow and not a light source beaming out. The final design may include a dimmer switch such that the lighting could be controlled after the building is occupied.

*Response to Comment A11-10*

This comment expresses concern that the background air quality data does not represent actual Newport Beach air quality. The South Coast Air Quality Management District has various air quality monitoring stations throughout Orange County. The nearest stations monitoring air quality data are identified in Section 5.2.3 of the REIR. These nearest stations provide the best available air quality data for the project area.

The comment was also concerned about Source Receptor Area 18 not accounting for projected cumulative construction and operational impacts. The discussion in 5.2-F of the REIR addresses potential cumulative impacts; the cumulative analysis incorporates a summary of projections consistent with CEQA Guidelines 15130(b).

*Response to Comment A11-11*

This comment expressed a concern that all feasible measures are incorporated to minimize or eliminate significant adverse air quality impacts. As discussed in Section 5.2, without mitigation the project could result in significant air quality impacts. Mitigation measures are identified to reduce each of these impacts to less than significant.

The comment also asks how the mitigation measures for construction (5.2-A) and operation (5.2-B) of the project would reduce contaminants. **Tables 5.2-6** and **5.2-7** identify the construction emissions that would occur with the implementation of the recommended mitigation measures. As shown in these tables, the implementation of the mitigation measures would reduce regional construction emissions of oxides of nitrogen (NO<sub>x</sub>) below the threshold and would reduce the localized particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>) construction emissions less than the established thresholds. The details of the reductions are provided in **Appendix C** of the REIR. The operational impacts discussed in 5.2-B were determined to be less than significant, as shown in **Tables 5.2-9** and **5.2-10**. Since the potential operational impacts on air quality would be less than significant, no additional mitigation measures are necessary.

*Response to Comment A11-12*

This comment recommends analyzing impacts of non-native landscaping on the marine environment. The City has developed a preliminary landscape palette that includes no invasive non-native species. Given the project's goal of maintaining a green landscape, there would be

some non-native species, but they would not be invasive, and therefore, would not result in a significant impact on the marine environment.

*Response to Comment A11-13*

This comment states that a project objective should include showcasing the bay setting and its habitat and make it part of the visitor experience. Section 3.1 of the REIR identifies the objectives of the project. No further response is necessary.

*Response to Comment A11-14*

This comment asks what impact park lighting would have on the night sky and if there could be impacts on birds. As discussed in 5.1-D, the proposed lighting on the project site would, to a large extent, simply replace the lighting that is currently provided at the existing facilities, although with newer, more efficient fixtures. The analysis concludes that the lighting impacts associated with the project would be less than significant. The lighting proposed at the park would consist of bollards that would provide lighting of just enough lumens to provide safety to park visitors at night. The park lighting would not impact the night sky as the light source would be louvered downward and be specified as night sky compliant.

*Response to Comment A11-15*

This comment requested a description of Areas A, B, and C from which the core samples were taken. **Figure 3** in the Dredge-Material Evaluation (**Appendix G.3** of the REIR) includes the locations of Areas A, B, and C. This comment also asks for the definition of 0 feet MLLW. MLLW stands for Mean Lower Low Water; 0 feet MLLW is 2.76 feet below mean sea level and represents the water line at a zero foot tide. The regulatory agencies commonly use MLLW as the basic unit of measurement of elevation in coastal waters.

The comment also questioned if the core samples extended deep enough to characterize the soil at the further extend of excavation. The core samples extended to -12 feet MLLW plus an additional -2 feet MLLW for overdredge material, which is an allowance that takes into account the variability in the actual dredge depth. The references regarding above and below 0 feet MLLW represent the elevations of the top of the core samples. The Dredge-Material Evaluation report has been reviewed by USACE and USEPA, neither of which raised sampling depth as a concern.

*Response to Comment A11-16*

This comment expressed a concern that construction activities would occur during heavy traffic conditions on the peninsula. Approximately 3,000 cubic yards of dredge material would need to be disposed of at an offsite land disposal site due to elevated concentrations of mercury. This

amount represents approximately 150 truck trips to dispose of the material; these truck trips would be spread over several days if not weeks. Truck activity from the project would not result in traffic conditions worse than would occur under full occupancy of the project. For major construction activities on the Balboa Peninsula, the City would require a construction management plan which includes traffic control to alleviate potential traffic related impacts to the immediate area. Additionally, construction activities within the “beach” areas (all areas south of Coast Highway) would not be allowed on federal holidays.

This comment also requests that a detailed timetable for dredging, truck staging, barges (if needed), and traffic management be prepared prior to the work beginning. The proposed project includes various phases of construction activities (i.e., demolition, excavation, dredging, exporting material, grading, building). The construction phases would be scheduled so that a specific timetable for construction activities is established in advance.

*Response to Comment A11-17*

This comment expresses concern regarding the operation of the marina for visiting vessels and about solid waste disposal facilities. The reference in the REIR to maintenance areas refers to mechanics working on the boats. The reference to vehicle boat wash areas refers to areas that allow boats hauled out of the water to be washed down. The proposed project does not include a fueling facility but does include a sewage pumpout station to allow boats to dispose of accumulated waste.

*Response to Comment A11-18*

This comment expresses concern regarding the removal of asbestos and lead paint before general demolition. Mitigation Measure MM 5.6-A.1 states that prior to demolition activities, the project proponent shall determine whether asbestos or lead-based paint materials are present within the existing onsite structures. If these materials are present, the project proponent shall properly dispose of these materials in a landfill that accepts asbestos and lead-based paint. The implementation of this measure would be required to be performed by a specialist. This measure is consistent with SCAQMD requirements to identify asbestos and, if found, to remove it using a specialized contractor approved by the SCAQMD. The City of Newport Beach is familiar with this process and has complied with the SCAQMD requirements on various City projects that included demolition.

*Response to Comment A11-19*

This comment expresses concern regarding off-site circulation impacts from implementing the proposed project. **Exhibit 3-6** of the REIR illustrates the location of the proposed parking lots

and the location of the alley that connects the main parking lot at 16<sup>th</sup> Street to 15<sup>th</sup> Street. See the Response to Comment A2-15.

*Response to Comment A11-20*

This comment requests additional analysis of stormwater runoff and drainage and expresses concern regarding pollutants that are not easily seen. See Response to Comment A5-6, above.

*Response to Comment A11-21*

This comment recommends the use of California native and California friendly plants for landscape management in the proposed vegetative bioswales and landscape biocells. The current plant palette for the project site includes drought-tolerant plants and non-invasive species.

*Response to Comment A11-22*

This comment asks if the parking analysis includes the proposed restaurant. The proposed project includes a café that would serve persons using the Marina Park facilities, including persons from visiting vessels in the marina, but it would be open to neighborhood residents as well. The City expects many area residents to walk there, and some area residents to boat there given the visitor-serving short-term slip(s) proposed. The café was included in the determination of facility parking spaces and has been accounted for in the traffic analyses.

*Response to Comment A11-23*

This comment asks if the streets and parking lots should be cleaned once a week and not the planned once per quarter as stated in the Preliminary Water Quality Management Plan. Quarterly sweeping of streets and parking lots is the minimum frequency required. The areas may be swept at a greater frequency (i.e., weekly or monthly) if the City determines that would be advisable. The hoist facility for the boating program would have a wash-down component so that salt water can be washed-off small boats before they go to storage. For any wash-down facility made part of the project, requirements of the RWQCB MS4 permit would be incorporated, including a localized concrete pavement sloping to a sand/water clarifier.

*Response to Comment A11-24*

This comment asks if the project includes a wash down facility for small and large sailing boats within the marina. See Response A11-23 above.

*Response to Comment A11-25*

This comment asks if the pollutant removal rate data in Table 1 of **Appendix H.1** is the most recent available data. This data is the most available data and was obtained from the 2003 California Stormwater BMP Handbook.

*Response to Comment A11-26*

This comment states that if a Use Permit and a Modification Permit is required for the lighthouse tower and the roof of the Balboa Complex, then the project would conflict with the applicable zoning ordinance. The project would not conflict with the Zoning Ordinance because the ordinance allows architectural features of structures to exceed the base height limit of 35 feet. The proposed lighthouse tower and the sail features of the Balboa Complex roof are architectural features that are allowed to exceed the base height limit of 35 feet.

*Response to Comment A11-27*

This comment asks if there was evidence that the two tennis courts that would be lost with the implementation of the proposed project are not needed or underutilized. According to the City's Recreation and Senior Services Department, over the one year period of May 1, 2008 through April 29, 2009 more than two courts were in use 4 percent of the time. This data is obtained through the City of Newport Beach Park Patrol program that monitors the tennis courts on a daily basis and tracks usage. Based on the above data, the removal of two of the four existing courts would not significantly affect the existing recreational use of the tennis courts.

*Response to Comment A11-28*

This comment states that there would be a negative effect on the community if the existing tennis courts and tot lot are removed prior to the construction of the proposed tennis courts and tot lot. The project schedule proposes to build the tennis courts and tot lot prior to removal of the existing tennis courts and tot lot facilities.

This comment also asks if the project would increase the need for lifeguard services, especially with a tot lot located close to the beach. Based on recommendations by the City Lifeguard Department a new lifeguard tower would be installed in Phase I due to the anticipated increased beach use; the lifeguard tower would remain in place for Phase II and would be constructed for the ultimate buildout Phase III of the project. The new lifeguard tower would be located at the midpoint between the existing tower at 18<sup>th</sup> street and the lease line of the American Legion.

*Response to Comment A11-29*

This comment states that **Exhibit 5.11-1** incorrectly identified the project site. **Exhibit 5.11-1** has been revised.

*Response to Comment A11-30*

This comment asks why the net trips were different on **Table 5.11-3** and at the top of page 5.11-8 of the Draft EIR. This error has been corrected in the REIR.

*Response to Comment A11-31*

This comment states that the primary access of 17<sup>th</sup> Street referred to on page 5.11-12 of the Draft EIR is not correct and asks what the primary access is to the project. The primary access to the project site would be 16<sup>th</sup> Street; the first sentence under 5.11-C has been corrected in the REIR.

*Response to Comment A11-32*

This comment asks if the term “approximately” in reference to the number of parking spaces on the project site can be removed. The final parking count cannot be determined until the final stages of design. The exact parking count may differ by a few spaces. See Response to Comment A2-15.

*Response to Comment A11-33*

This comment asks if the current 21 parking spaces located along Bay Street between 18<sup>th</sup> Street and 19<sup>th</sup> Street would remain during construction. These parking spaces, which are currently public parking, are proposed to remain during construction activities. See response A2-15 for an analysis of the proposed project’s effects on long-term parking on and near the site.

*Response to Comment A11-34*

This comment asks what provisions would be implemented to ensure that ocean beach users would not use parking spaces meant for Marina Park users. As indicated in Section 3.4.3 of the REIR, a Parking Management Plan would be included in the project to ensure onsite parking is available for Marina Park patrons. The specific control approach would be determined as specific designs for the park are finalized.

*Response to Comment A11-35*

This comment states that during the construction phase of the project, the residents, businesses, and visitors to the Peninsula would face a lot of congestion. For major construction activities on the Balboa Peninsula, the City would require a construction management plan which includes

traffic control to alleviate potential traffic related impacts to the immediate area. Additionally, construction activities within the “beach” areas (all areas south of Coast Highway) would not be allowed on federal holidays.

The comment also asks if the project would include provisions for a public launch ramp for small boats. The existing launch ramp at 18<sup>th</sup> Street would remain and the proposed project would not provide any additional launch ramp. Small boats such as kayaks would be able to be brought by trailer from the sailing center building to the beach area for ocean launch. Provisions for access will be detailed in the final design plans. The Parks and Recreation Department would have kayaks available for programming of classes. People bringing kayaks into the parking lot would be able to use a trailer to gain beach access between the sailing center and community center.

*Response to Comment A11-36*

This comment states that significant data is missing regarding cumulative impacts due to the missing of three large current and probable projects. The three projects that are referenced in the comment include the following (these projects are included in the project cumulative analysis – see Table 4-1 Cumulative Project List):

*Banning Ranch* – This project is located at 4520 West Coast Highway and is located approximately 1.5 miles west of the site. Banning Ranch is proposed to include 1,375 dwelling units, 75,000 gross square feet of commercial retail, 75-room accommodations, parks, and open space.

*Aerie* – This project is located at 201 Carnation Avenue and is located approximately 2.5 miles east of the project site. Aerie is a 6-unit condominium project with subterranean parking.

*Sunset Ridge* – This project is located at 4850 West Coast Highway and is located approximately 1.3 miles west of the project site. Sunset Ridge Park is proposed as a 13.67-acre active park.

Due to the characteristics of the project and the project site as well as the distance of the three projects listed above from the project site, the proposed project has the potential to contribute to cumulative air quality, public services (fire and police), and transportation and traffic impacts associated with the three projects listed above. The remaining environmental issues that were addressed for the Marina Park project would either not contribute to a cumulative impact or would contribute nominally to a cumulative impact and, therefore, would be considered less than cumulatively considerable.

The cumulative air quality impacts associated with the project are discussed under 5.2-F of the REIR. These impacts are associated with the project’s cumulative contribution of ozone (NO<sub>x</sub>), PM<sub>10</sub> and PM<sub>2.5</sub> emissions during construction activities. Since the impact associated with a

project's contribution is based on the level of emissions associated with a particular project, the inclusion of the three cumulative projects listed above are not critical for the evaluation. The implementation of Mitigation Measure 5.2-A.3 would reduce ozone emissions to a less than significant level. Since, after mitigation, the project would not exceed the regional threshold for NOx, the project would not contribute to a cumulatively considerable impact for ozone (NOx). In addition, the implementation of Mitigation Measures MM 5.2-A.1 and 5.2-A.2 would reduce the project's contribution to less than the localized significance thresholds for PM10 and PM2.5. Since, after mitigation, the project would not exceed the localized significance thresholds for PM10 and PM2.5, the project would not contribute to a cumulatively considerable impact for PM10 and PM2.5.

Cumulative air quality impacts (i.e., greenhouse gases) associated with the project are also discussed under 5.2-I in the Draft EIR. The project would have a less than significant impact on greenhouse gas emissions using the City of Newport Beach threshold.

Cumulative public services impacts associated with the proposed project are discussed under 5.10-A and 5.10-B. Both the fire department and the police department regularly evaluate their services throughout the City. The Sunset Ridge and Aerie projects are expected to require nominal police and fire services. The Banning Ranch project has the greatest potential to require additional fire personnel staffing as well as equipment and facilities. The proposed Marina Park's contribution to the need for additional staffing, equipment, or facilities is considered less than cumulatively considerable. Therefore, the proposed Marina Park would result in a less than significant cumulative impact on fire and police services.

Cumulative traffic impacts are discussed under 5.11-A in the Draft EIR, and as discussed in Table 5.11-4, the proposed Marina Park project would contribute more than one percent to the traffic volume at two intersections. As shown in Table 5.11-6, the addition of the Marina Park project to background traffic levels results in the same intersection utilization capacity as the levels shown prior to adding the Marina Park project. Therefore, if additional projects that have not yet been approved, such as the three listed above, were added to the intersection prior to adding project traffic, the intersection utilization capacity would still be the same before and after the addition of project traffic. Therefore, traffic impacts associated with the Marina Park project would be less than cumulatively considerable.

#### *Response to Comment A11-37*

This comment asks for additional data related to project alternatives, specifically the Reduced Marina Alternative. The purpose of the project alternatives is to identify alternatives that would reduce potential significant environmental impacts. The description of the Reduced Marina Alternative is provided in Section 6.3.1 of the REIR. The impact analysis is provided in Section



6.3.2 and states that the Reduced Marina Alternative would reduce potential significant short-term construction impacts, thus requiring less mitigation. It is important to note that the implementation of the proposed Marina Park project would not result in significant environmental impacts after the implementation of the recommended mitigation measures. Therefore, although the Reduced Marina Alternative would reduce potential significant impacts, both the proposed project and the Reduced Marina Alternative would result in no significant environmental impacts after mitigation.

**California Cultural Resource Preservation Alliance, Inc.**

*Response to Comment A12-1*

This comment suggests that buried archaeological resources could be present onsite and could be impacted by project construction. As discussed in Section 5.4 of the REIR, a record search, a pedestrian survey, and a review of the historic-era ground disturbance were conducted. Based on those evaluations, the probability of significant, intact subsurface deposits was determined to be low, and therefore, the project would result in a less than significant impact on archaeological resources.

*Response to Comment A12-2*

This comment recommends that an archaeologist be present to monitor excavation and dredging. Although not required as a mitigation measure, the City would have the opportunity to include an archaeological monitor, if desired.

**Gaberlino-Tongva Tribe**

*Response to Comment A13-1*

This comment requests that the Gabrielino-Tongva Tribe be hired as the Native American monitor for the proposed excavation and grading activities. Because the Balboa Peninsula is a relatively new feature the potential for finding resources is not considered to be very high. However if archaeological artifacts are found during construction a Native American representative will be contacted (as appropriate); see Mitigation measure MM 5.4-B.1.

**Central Newport Beach Community Association**

*Response to Comment A14-1*

This comment expressed support for the project and would like the project to minimize impacts on residents and visitors to the beach. The comment does not express any concern with the content of the Draft EIR; no further response is required.

*Response to Comment A14-2*

This comment states that the comments made by the Central Newport Beach Community Association dated June 19, 2008 on the NOP for Marina Park were not included in the Draft EIR. The Central Newport Beach Community Association NOP comments dated June 19, 2008 have been added to Appendix A of the Draft EIR.

*Response to Comment A14-3*

This comment asks if the proposed Marina Park parking lots would be discouraged for summer ocean beach parking demands. The two parking lots on the project site are intended for the uses within Marina Park. See Response A2-15 for a discussion of long-term parking issues.

This comment also suggests that the proposed community building (i.e., Multi-Purpose Building) should not include any activities on Saturdays and Sundays from Memorial Day to Labor Day thus allowing park and beach users to utilize the onsite parking. This comment provides an opinion and not a concern with the contents in the Draft EIR.

*Response to Comment A14-4*

This comment expresses concern with the reliability and energy efficiency of the mechanical device that would be selected to enhance the movement and mixing of water within the proposed basin. During the detailed design phase of the proposed marina, the selection of the specific mechanical devices that would be used at the marina would be based on various factors including operation and maintenance costs, effectiveness, and other factors. As identified in Mitigation Measure MM 5.7-A.2, the average flushing reductions in 24 hours would be required to reach 70 percent to meet the Environmental Protection Agency's guidelines.

*Response to Comment A14-5*

This comment expresses concern regarding public safety issues associated with the proximity of the tot lot to Newport Bay. Please see Response to Comment A11-28 regarding the provision of an additional lifeguard station.

*Response to Comment A14-6*

This comment expresses concern that parking at the existing apartments and commercial building adjacent to the alley requires backing into the alley. The comment suggests that 15<sup>th</sup> Street be limited to only emergency and maintenance access needs with a gate at the east end. Similar to the current parking situation, motorists who park at the existing apartment and commercial building adjacent to the alley would need to back into the alley. Due to the narrowness and shortness of the alley, vehicle speeds are low, which allows motorists to back up into the alley

safely. Since the proposed parking lot would be for Marina Park uses, the highest peak traffic volumes (46 vehicles per peak hour) anticipated to use the proposed parking lot would be during the evening peak hour. It is anticipated that a portion of the peak traffic volume could utilize the alley between the parking lot and 15<sup>th</sup> Street. However, due to the relatively low volume of traffic, vehicles needing to back into the alley from the existing parking spaces at the apartment and commercial building would not experience significant safety issues.

*Response to Comment A14-7*

This comment asks if the residence along 18<sup>th</sup> Street at Bay Avenue could be added to the list of existing sensitive receptors on **Table 5.9-2** of the REIR. This residence is located the nearest to the project site (i.e., 40 feet) and is reflected in the first receptor in **Table 5.9-2**. The reference to the residence as a mobile home is incorrect, and has been changed.

*Response to Comment A14-8*

This comment expresses a concern that if the City does not discourage ocean beach usage of Marina Park parking lots, a local traffic pattern would develop between 15<sup>th</sup> Street and 20<sup>th</sup> Street. As identified in Section 3.4.3, a Parking Management Plan would be required to ensure that onsite parking is available for Marina Park patrons. The parking management alternatives that have been explored include fee for parking, meters, and/or other systems. The Parking Management Plan is part of the project (as indicated in Section 3.4.3); the various alternatives do not need to be included as mitigation measures. The plan would reduce potential parking impacts, thus reducing circulation and congestion impacts in the vicinity of Marina Park.

*Response to Comment A14-9*

This comment asks that the alternatives section include a reduction in the size of the community center as well as a phased scenario with the Community Center being the last improvement. The purpose of the alternatives is to reduce potential significant impacts of the proposed project with a feasible alternative. The issues of concern that are raised in the comment include parking, traffic, and visual impacts. Because each of these impacts was determined to be less than significant in the REIR, alternatives to reduce these impacts would not meet the intent of the alternative analysis under the California Environmental Quality Act.

**Thomas R. Rossi, Resident**

*Response to Comment P1-1*

This comment expresses a concern about the potential visual impacts on the views from the residence at the corner of 18<sup>th</sup> Street and West Bay Avenue from the development of the proposed Girl Scout Building. The views of the commenter are noted. The CEQA analysis addresses

public view impacts. City staff will continue to meet with Mr. Rossi to address his concerns to the extent feasible.

*Response to Comment P1-2*

This comment asks about the hours of operation of the Girl Scout Building. As stated in the Project Description, the Girl Scout Building would be used in the same manner as the existing Girl Scout Building. The hours of operation would remain the same and the specific hours of operation of the Girl Scout Building and other project facilities are provided in Section 3.3.3 of this REIR. The hours of operation, operating characteristics and construction of the new Girl Scout facility will be addressed through the Use Permit application process

*Response to Comment P1-2*

This comment states that the commenter objects to the project and that the concerns raised in the letter were not addressed. Please see Response to Comments P1-1 and P1-2 regarding the visual issues and operation of the Girl Scout Building.